THE EUTHANASIA FALLACY: WHY IT IS TIME TO REGULATE IN AUSTRALIA

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TABLE OF CONTENTS

I INTRODUCTION

The word 'euthanasia' whenever uttered provokes strong opinions and emotions, occasionally even blameworthy for dividing Australian households.[1] Despite several attempts over the last decade to enshrine euthanasia as a right under law, its illegality has continued to plague Australia's legal system. However, because euthanasia is accepted by majority of Australians, its practice endures amongst exponents despite its unlawfulness throughout Australian jurisdictions. Possibly no other area is it more clearly demonstrated that present laws are out-of-date and failing as a deterrent. Through a critical analysis of euthanasia's legislative history, views of proponents and opponents, and current practices of medical professionals and loved ones, this paper seeks to demonstrate that despite euthanasia's proscription, it continues to be practiced in our hospitals, our homes and perhaps, indirectly through advance directives.

The writer will also demonstrate that blanket prohibition on euthanasia, and law's duplicitous acceptance of analogous practices such as the doctrine of double-effect and a patient's right to deny medical treatment, has resulted in laws failure to deter factions who deem the act of euthanasia humane. Naturally, in evincing that euthanasia endures and will continue to endure through 'underground' practices by medicos[2] and/or loved ones, the need for definitive black letter law[3] delineating strict, but clearer limitations will be proven to be a far better alternative, than permitting such a serious matter of taking a life to remain unregulated which in essence, endangers society and brings law into disrepute.

II BACKGROUND

There is no legally or ethically accepted definition of euthanasia. The word is believed to have originated from two Greek[4] words, 'eu' and 'thanatos' which, when translated, means 'well death' or more poetically,[5] 'gentle and easy death'. Undoubtedly, it is the type of death we desire for loved ones and ourselves. However, despite euthanasia's virtuous intentions, the word undeniably arouses strong emotions whenever it is uttered.[6] For some, euthanasia is tantamount to, or merely a euphemism for killing.[7] For

[1] Mirko Bagaric, 'Euthanasia: Patient Autonomy Versus the Public Good' (1999) 18(1) *University of Tasmania Law Review* 146.
[2] *Oxford Medical Dictionary*. 'Medico' is defined to include physicians, surgeons and medical students.
[3] Justin Healey (ed), *Issues in Society: Voluntary Euthanasia Debate* (Spinney Press, 2013) vol 359.
[4] Suresh Math and Santosh Chatuvedi, 'Euthanasia: the Right to life vs Right to Die' (2012) 136(6) *Indian Journal of Medical Research* 899 <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3612319/>.
[5] Andrew Dunnett, *Euthanasia: The Heart of the Matter* (Hodder and Stoughton, 1st ed, 1999) 37.
[6] Josef Kure (ed), *Euthanasia – The "good death" Controversy in Humans and Animals* (InTech, 2011).

others, euthanasia is a victimless crime[8] being the painless killing of individuals suffering from incurable and/or painful diseases.[9]

Undeniably, the euthanasia debate raises a myriad of ethical, moral, social and legal issues, which are often difficult to consider in isolation.[10] However, broadly speaking, the emphasis of all debates is 'right to life' versus autonomy[11] and the 'right to choose' one's destiny, free from arbitrary or unjustified interference.[12] Specifically, if advances in medical technology permits one to avoid unnecessary pain and suffering, why is it wrong for an individual to control their own life or death?[13]

Euthanasia takes many forms. It may be 'active', which entails persons actively assisting a person to die, or 'passive', wherein no action is taken to prolong life. Furthermore, it can be 'voluntary', 'involuntary' or 'non-voluntary' depending on the competence of the recipient.[14] The primary focus of this paper is on voluntary active and passive euthanasia.

III HISTORY OF NORTHERN TERRITORY EUTHANASIA LAWS

At present, the Northern Territory, like most jurisdictions, has laws that create significant obstacles for people wishing to legally end their lives, and for anyone who helps them in that endeavour.[15] Broadly speaking, any deliberate act which causes the death of another is defined as murder,[16] or in the alternative, manslaughter where an intent to kill cannot be established or relevant partial defences exist.[17]

The Northern Territory's Legislative Assembly represents less than 2 per cent of the nation's population. For a short time in 1996, it was considered revolutionary being the first legislature in the world to legalise euthanasia, despite initial widespread and intense debate.[18] Despite the passage of the Bill being

[7] Dunnett, above n 5, 4.
[8] Mark Sayers, 'Euthanasia: Moral Murder' (1995) 4(1) *Griffith Law Review* 6, 14.
[9] George Williams and Matthew Darke, 'Euthanasia Laws and the Australian Constitution' (1997) 20(3) *University of New South Wales Law Journal* 647.
[10] Alexander Smith, 'Euthanasia: The Strengths of the Middle Ground' (1999) 7 *Medical Law Review* 194, 195.
[11] Kure, above n 6, 3.
[12] Bagaric, above n 1, 150.
[13] Ibid 146.
[14] Julia Werren, Necef Yuksel and Saxon Smith, 'Avoiding a Fate Worse than Death: An Argument for Legalising Voluntary Physician-Based Euthanasia' (2012) 20 *Journal of Law and Medicine* 184.
[15] Sarah Steele and David Worswick, 'Destination Death: A Review of Australian Legal Regulation Around International Travel to end Life' (2013) 21 *Journal of Law and Medicine* 415, 417.
[16] *Criminal Code Act 1983* (NT) s161-162.
[17] Ibid s158-159.
[18] Bagaric, above n 1, 146.

arduous, the *Rights of the Terminally Ill Act 1995* (NT) ('*ROTA*') marginal[19] passing on 25 May 1996[20] represented the high watermark for voluntary euthanasia[21] in Australia, and arguably worldwide.[22]

The intent of the legislation was clear. The *ROTA* provided a statutory regime under which a medically qualified person, under certain circumstances, could terminate the life of a terminally ill person who voluntarily requests for assistance[23] humanely, with dignity,[24] and without fearing he/she would be prosecuted for providing that aid.[25] In order to avail this right,[26] individuals must be aged eighteen years or over and experiencing unacceptable suffering as a result of their terminal illness.[27] Furthermore,[28] additional preconditions[29] required patients to demonstrate to[30] the satisfaction of four medical practitioners[31] of differing qualifications, that he/she has canvassed and understood all palliative care options,[32] and most importantly, is of sound mind.[33] It is understood, seven terminally ill patients exercised the right to request to be euthanised between July 1996 and March 1997. Of the seven requests received, only four were legally euthanised under the *ROTA*[34] before the Commonwealth successfully repealed its validity.

Despite surviving several[35] challenges,[36] the *ROTA*, as stated above, was finally defeated after only nine months in operation by the Commonwealth. Whilst it is beyond the scope of this paper to discuss the constitutional issues involved, the Commonwealth's plenary power under s 122 of the *Australian Constitution* permits it to make laws for the government of any Australian territory and Norfolk Island. Unlimited by subject matter,[37] this section of the *Australian Constitution* was essentially the loophole the Commonwealth utilised to overturn the *ROTA*, notwithstanding that the *Act* was passed by a

[19] Williams and Darke, above n 9, 648.
[20] Select Committee on Euthanasia, Parliament of Northern Territory, *The Right of the Individual or the Common Good?* (1995) <http://www.nt.gov.au/lant/parliamentary-business/committees/rotti/rottireport/vol1.pdf>.
[21] Werren, Yuksel and Smith, above n 14, 184.
[22] Williams and Darke, above n 9, 648.
[23] Department of Parliamentary Services (Cth), Bills Digest, No 45 of 1996-97, 17 October 1996 <http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/bd/BD9697/97bd045>.
[24] Northern Territory, *Parliamentary Debates*, Legislative Assembly, 22 February 1995, 67 (Marshall Perron) <http://www.nt.gov.au/lant/parliamentary-business/committees/rotti/serial67speech.pdf>.
[25] *Rights of the Terminally Ill Act 1995* (NT) Long title.
[26] Lorana Bartels and Margaret Otlowski, 'A Right to Die? Euthanasia and the Law in Australia' (2010) 17(4) *Journal of Law and Medicine* 532, 540.
[27] *Rights of the Terminally Ill Act 1995* (NT) s 4.
[28] Ibid s 7-8.
[29] Bartels and Otlowski, above n 26, 540.
[30] *Rights of the Terminally Ill Act 1995* (NT) s 7.
[31] *Rights of the Terminally Ill Regulation 1996* (NT) reg 4
[32] *Rights of the Terminally Ill Act 1995* (NT) s 7.
[33] Dunnett, above n 5, 4.
[34] Steele and Worswick, above n 15, 418.
[35] See, eg, *Wake v Northern Territory of Australia* (1996) 109 NTR 1.
[36] Department of Parliamentary Services (Cth), above n 23.
[37] See, eg, *Spratt v Hermes* (1965) 114 CLR 226, 242 (Barwick CJ).

democratically elected Territorian government. The Act responsible for the *ROTA's* demise was introduced by Kevin Andrews as a private member's Bill, with the backing of both the Prime Minister and opposition leader. Andrews justified the Euthanasia Laws Bill 1996 (Cth) ('EL Bill'), by highlighting that countries worldwide have rejected the right to die. For that reason, and the fact that the *ROTA* was passed by one vote in a 'small territory, with the population of a suburban municipality in Melbourne or Sydney', he considered it the Commonwealth's responsibility to veto its applicability given its overall effect on all Australians.[38]

The EL Bill passed by eighty-eight votes to thirty-five in the lower house, but arguably divided the upper house given its passage by thirty-eight votes to thirty-three.[39] Commencing operation on 27 March 1997, sch 1[40] of the *Euthanasia Laws Act 1997* (Cth) ('*ELA*') was integrated into the *Northern Territory (Self Government) Act* 1978 (Cth) as s 50A(1), thereby removing, to this day,[41] the Northern Territory's[42] government power to enact laws,[43] 'which permit or have the effect of permitting (whether subject to conditions or not) the form of intentional killing of another called euthanasia (which includes mercy killing) or the assisting of a person to terminate his or her life'.[44]

According to legal observers,[45] the *ELA* was remarkable. It overturned constitutional law convention[46] that the Commonwealth will not derogate, revoke, or interfere with Northern Territory's[47] legislative power, so as to violate the reasonable expectations of Territorians[48] that their legislature would not be deprived of their power of self-government.[49] Despite attempts to repeal the *ELA,* it is still in force today. During the final attempt in 2008, the Senate Standing Committee on Legal and Constitutional Affairs presented a report on the proposed Rights of The Terminally Ill (Euthanasia Laws Repeal) Bill 2008 (Cth). However,

[38] Commonwealth, *Parliamentary Debates*, House of Representatives, 28 October 1996, 5904 (Kevin Andrews).
[39] Sharon Fraser and James Walters, 'Death – Whose Decision? Euthanasia and the Terminally Ill' (2000) 26 *Journal of Medical Ethics* 121, 124.
[40] *Euthanasia Laws Bill 1996* (Cth) sch 1.
[41] Bartels and Otlowski, above n 26, 532.
[42] Steele and Worswick, above n 15, 418.
[43] *Northern Territory (Self Government) Act 1978* (Cth) s 50A(2)(a)-)d).
[44] *Euthanasia Laws Bill* 1996 (Cth) Sch 1.
[45] Senate Legal and Constitutional Legislation Committee, Parliament of Australia, *Euthanasia Laws Bill 1996* (1997) 2 <http://www.nt.gov.au/lant/parliamentary-business/committees/rotti/euthanasia97.pdf>.
[46] Bartels and Otlowski, above n 26, 540.
[47] *Northern Territory (Self Government) Act 1978* (Cth) s 6.
[48] Department of Parliamentary Services (Cth), above n 23.
[49] Williams and Darke, above n 9, 651.

despite receiving over 1,800 submissions, the cumulative effect of divergent views, apprehension,[50] and euthanasia's declining support, resulted in the attempt failing.[51]

IV IS THERE A SILVER LIMING?

Despite public opinion surveys since 1987 consistently evincing[52] support for voluntary euthanasia having risen to 85 per cent across Australia,[53] several attempts to pass euthanasia laws in Tasmania,[54] South Australia,[55] Victoria,[56] New South Wales,[57] and Western Australia,[58] have proven unsuccessful.[59] For example, despite 72 per cent of voters in New South Wales' 2015 election strongly agreeing with the right for terminally ill patients to legally end their own lives with medical assistance,[60] the Rights of the Terminally Ill Bill 2013 (NSW) was defeated a couple of years earlier in the senate by a resounding twenty-three votes to thirteen.[61] Tasmania, in contrast, appears to be the closest State to pass euthanasia laws.[62] Following approximately ten hours of debate,[63] the Voluntary Assisted Dying Bill 2013 (Tas) was put to a conscience vote in the House of Assembly and only narrowly defeated by thirteen votes to eleven,[64] despite containing resilient safeguards[65] to guard against abuse.[66]

[50] Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, *Rights of the Terminally Ill (Euthanasia Laws Repeal) Bill 2008* (2008) 25.
[51] Colleen Cartwright, 'The Rights of the Terminally Ill Act Revisited' (2008) 17(1) *Australian Health Bulletin* 2, 12.
[52] Ibid 7.
[53] Australian Associated Press, '85 per cent Support Voluntary Euthanasia – Poll' *The Australian* (online), 26 October 2009 < http://www.theaustralian.com.au/news/latest-news/per-cent-support-voluntary-euthanasia-poll/story-fn3dxiwe-1225791455181>.
[54] *Dying with Dignity Bill 2009* (Tas).
[55] See, eg, *Ending Life with Dignity (No 2) Bill 2013* (SA).
[56] *Medical Treatment (Physician Assisted Dying) Bill 2008* (Vic).
[57] *Rights of the Terminally Ill Bill 2013* (NSW).
[58] Michael Douglas, 'An Absurd Inconsistency in Law: Nicklinson's Case and Deciding to Die' (2014) 21 *Journal of Law and Medicine* 627, 637.
[59] Werren, Yuksel and Smith, above n 14, 186.
[60] Claire Aird, 'NSW Election 2015: Almost three quarters of voters support euthanasia, Vote Compass finds' *News* (online) 15 March 2015 < http://www.abc.net.au/news/2015-03-15/nsw-voters-support-euthanasia-vote-compass-finds/6313864>.
[61] Sarah Gerathy, 'Upper house votes down Voluntary Euthanasia Bill' ABC News (online) 23 May 2013 < http://www.abc.net.au/news/2013-05-23/upper-house-votes-down-voluntary-euthanasia-bill/4709020>.
[62] Conversation, *Another Voluntary Euthanasia Bill Bites the Dust* (19 November 2013) <http://theconversation.com/another-voluntary-euthanasia-bill-bites-the-dust-19442>.
[63] Stephen Smiley, 'Voluntary Euthanasia Law Defeated by Two Votes' *ABC News* (online), 26 November 2013 < http://www.abc.net.au/news/2013-10-17/voluntary-euthanasia-law-defeated-by-one-vote/5029876>.
[64] News, 'Tasmania's Euthanasia Bill Fails Narrowly' *News* (online), 17 October 2013 <http://www.news.com.au/national/breaking-news/tasmanias-euthanasia-bill-fails-narrowly/story-e6frfku9-1226741999723>.
[65] Ibid.
[66] Andrew Darby, 'Euthanasia Bill Put Forward in Tasmania' *Sydney Morning Herald* (online) 26 September 2013 < http://www.smh.com.au/national/euthanasia-bill-put-forward-in-tasmania-20130926-2uhb9.html>.

In reality, the defeat of euthanasia Bills in jurisdictions throughout Australia will not bring an end to individuals taking their own lives, or asking loved one's to assist them to do so.[67] It has been more than two decades since the right to die under euthanasia law has been available in Australia, which is a failing Senator Richard Di Natale seeks to remedy. On 24 June 2014, Di Natale's exposure draft for a national 'dying with dignity' legislation, the Medical Services (Dying with Dignity) Bill 2014 (Cth) ('Dignity Bill'), was introduced into the senate.[68]

The object of the Dignity Bill is to recognise the right of a mentally competent adult, who is suffering intolerably from a terminal illness, to request a medico to provide medical services that allows the person to end his/her life peacefully, humanely and with dignity. Following introduction, a motion was passed to have the Dignity Bill considered by a senate inquiry. In adopting this course of action, Di Natale is providing an opportunity for national debate on how to best proceed with reform,[69] and most importantly, it will allow interested parties to provide feedback on how the Dignity Bill may be improved.[70]

The Dignity Bill is unique. Ordinarily, laws relating to voluntary assisted dying have been widely regarded as a matter for the States. Di Natale is however demanding that the Commonwealth consider the issue of euthanasia under s 51 (xxiiiA) of the *Australian Constitution*, which grants power to the Commonwealth to legislate regarding 'medical services'.[71] The proposed Dignity Bill will therefore seek to apply this section of the *Australian Constitution*[72] to define a 'dying with dignity medical service', which will authorise and indemnify medicos from civil, criminal and disciplinary proceedings[73] by States/Territories for prescribing, preparing and/or administering substances that would assist a terminally ill person to end their life humanely.[74]

As an aside, the Dignity Bill's operative provisions are analogous to Northern Territory's repealed *ROTA*. Pertinent provisions[75] similarly impose mandatory prerequisites and safeguards.[76] In effect, persons

[67] Smiley, above n 63.
[68] Greens, *Committee Calls for Conscience Vote on Dying with Dignity* (10 November 2014) <http://greens.org.au/node/6469>.
[69] Richard Di Natale, *Dying with Dignity* (2014) Australian Greens <http://richard-di-natale.greensmps.org.au/campaigns/dying-dignity>.
[70] Dying with Dignity New South Wales, Submission to *Senate Inquiry: Exposure Draft of the Medical Services (Dying with Dignity) Bill 2014* (21 August 2014) <http://dwdnsw.org.au/sub140821/>.
[71] Ibid.
[72] Di Natale, above n 69.
[73] *Medical Services (Dying with Dignity) Exposure Draft Bill 2014* (Cth) s 3.
[74] Di Natale, above n 69.
[75] *Medical Services (Dying with Dignity) Bill 2014* (Cth) s 12.
[76] Di Natale, above n 69.

requesting assistance must be Australian residents of at least eighteen years[77] who have been assessed by three independent medicos. The medicos, all of differing qualifications,[78] must be satisfied on reasonable grounds that the patient has freely[79] considered the implications of his/her request,[80] is suffering from a terminal illness, of sound mind,[81] has no reasonable prospect for recovery and finally, the only medical treatment available is limited to relieving the patient's pain and suffering until death eventuates.[82]

An overwhelming number of submissions have been made. As was expected, Australians remain divided. Nevertheless, the submissions suggest that 80 per cent of Australians, many being older,[83] favour voluntary euthanasia having expressed the desire to have control over their own deaths.[84] Additionally, and surprisingly, 68 per cent of Protestants and Catholics also support euthanasia, with many acknowledging its current practice despite its illegality. However, regardless of the above statistics, opponents have been relentless in their criticism of the Dignity Bill. A dominant contention by opponents, is the inability for euthanasia laws to protect the vulnerable who, in their opinion, are already being euthanised[85] without explicit request and/or consent.[86]

Notwithstanding the above uncorroborated accusations, despite minute recommendations suggested by the Legal and Constitutional Affairs Legislation Committee ('Committee'), the Dignity Bill, for reasons set out in this paper, strikes the right balance on such a difficult issue through its extensive array of safeguards.[87] In the opinion of many academics, mechanisms in the Dignity Bill are adequately resilient to protect the vulnerable against misuse, whilst at the same time appeasing proponents by giving individual's autonomy over their own life and death by decriminalising euthanasia.[88]

In November 2014, the federal parliamentary committee recommended that party leaders allow Ministers a conscience vote on the issue of euthanasia and the Dignity Bill. In December 2014, Prime Minister Tony

[77] *Medical Services (Dying with Dignity) Bill 2014* (Cth) s12(1)(a)-(b).
[78] Ibid s 12(1)(d).
[79] Ibid s 12(1)(k)
[80] Ibid s 12(1)(j)
[81] Ibid s 12(1)(e)
[82] Ibid s 12(1)(c)
[83] Aird, above n 60.
[84] Senate Legal and Constitutional Affairs Legislation Committee, Parliament of Australia, *Medical Services (Dying with Dignity) Exposure Draft Bill 2014* (2014) 12.
[85] Linda Belardi, *Tasmanian Euthanasia Bill Defeated in Parliament* (22 October 2013) Australian Ageing Agenda < http://www.australianageingagenda.com.au/2013/10/22/tasmanian-euthanasia-bill-defeated-in-parliament/>.
[86] Smiley, above n 63.
[87] Bartels and Otlowski, above n 26, 555.
[88] Roger Magnusson, '"Underground Euthanasia" and the Harm Minimization Debate' (2004) 32(3) *Journal of Law, Medicine and Ethics* 486, 489.

Abbott committed to allowing Liberal Party members to vote with their conscience, despite being personally against it. It is envisaged that the Dignity Bill, which has been co-sponsored by several Ministers, will be put to a conscience vote sometime in the second half of 2015.[89] In the meantime, euthanasia proponents will continue to promote euthanasia's necessity via some of the arguments below. Hopefully, public awareness, together with Di Natale addressing recommendations made by the Committee, will result in the Dignity Bill's impending passage.

V THE EUTHANASIA DEBATE

A *Pro-euthanasia*

Despite medical advances and advances in palliative care, it is still the case that some still endure slow, torturous and demeaning deaths.[90] Proponents of euthanasia therefore strongly believe[91] in 'the right to die with dignity'.[92] Promoting an individual's right to autonomy, this argument is indisputable by opponents,[93] hence is the strongest line of reasoning in support of legalisation.[94] Autonomy is the right to exercise one's personal liberty/choice[95]free from arbitrary or otherwise unjustified interference.[96] Medicos who have acquiesced to requests for assistance to die have cited autonomy as instrumental in their decision to assist.[97] Accordingly, if individuals have the right to control their own body and therefore their life, it is arguably an unjustifiable encroachment upon an individual's liberty to prevent a competent terminally ill patient from asking a cooperative medico to terminate his/her life.[98]

Furthering the above argument, common law has long recognised a competent individual's right to refuse medical treatment.[99] Typically uncontroversial,[100] and in some jurisdictions entrenched in legislation,[101] it is

[89] Kate Hagan, 'Tony Abbott Commits to free Vote on Euthanasia' Sydney Morning Herald (online) 20 December 2014 <http://www.smh.com.au/national/tony-abbott-commits-to-free-vote-on-euthanasia-20141219-12ayc7.html>.
[90] Bagaric, above n 1, 153.
[91] Rod MacLeod, Donna Wilson and Phillipa Malpas, 'Assisted or Hastened Death: The Healthcare Practitioner's Dilemma' (2012) 4(6) *Global Journal of Health Science* 87.
[92] Bagaric, above n 1, 152.
[93] Michael Douglas, above n 58, 638.
[94] Jeremy Prichard, 'Euthanasia: A Reply to Bartels and Otlowski' (2012) 19 *Journal of Law and Medicine* 610.
[95] Bartels and Otlowski, above n 26, 550.
[96] Bagaric, above n 1, 150.
[97] MacLeod, Wilson and Malpas, above n 91, 91.
[98] Bagaric, above n 1, 152.
[99] See, eg, *Rogers v Whitaker* (1992) 175 CLR 479 (Mason CJ and Brennan, Dawson, Toohey and McHugh JJ) approving *F v R* (1983) 33 SASR 189, 193 (King CJ); *Brightwater Care Ground (Inc) v Rossiter* (2009) 40 WAR 84; *Hunter and New England Area Health Service v A* (2009) 74 NSWLR 88.
[100] Michael Douglas, above n 58, 630.
[101] *Natural Death Act 1988* (NT) s 4(1); *Medical Treatment (Health Directions) Act 2006* (ACT) s 7; *Powers of Attorney Act 1998* (Qld) s 35(2); *Consent to Medial Treatment and Palliative Care Act 1995* (SA) s 7.

arguably duplicitous to allow patients to reject[102] medical assistance/treatment with the intent of inducing[103] death, while categorically prohibiting[104] patients from seeking active assistance[105] from medicos with the similar intent of bringing about death.[106] Opponents vehemently disagree. They consider that causation, intent and foresight distinguishes killing from letting a patient die.[107] Certainly a credible contention, it is however fundamentally flawed on a closer analysis.[108] For example, if failing to treat a patient results in his/her death, then that medico is causally responsible[109] in the sense that the patient could have lived but for that medicos failure to treat.[110] Intention and foresight is also established, given that the medico knew, or ought to have known, that death would ensue without treatment hence could have prevented it but did nothing.[111]

Consistent with the above, medicos have outwardly acknowledged that palliative care can only help certain patients and even then, only so much. Compassion obliges society to prevent suffering and cruelty amongst humanity. Proponents therefore contend that maintaining legal prohibition on euthanasia amounts to cruel and degrading treatment. The law implicitly recognises an individual's freedom to commit suicide.[112] It further implicitly recognises an individual's freedom to refuse treatment,[113] thereby the right to die, albeit slowly and painfully.[114] In the case of the latter, it is bewildering how the law could allow a human to die in an undignified and painful manner, notwithstanding the existence of medical advances which would allow those wishing to die mercifully, to be euthanised humanely.[115]

Viewed from this perspective, it is indisputable that the law fails to completely acknowledge an individual's autonomous right to control their own life and death. Confounding to comprehend, given it is plausible to argue that acknowledging one's right to die is one trivial step away from laws current acknowledgment of the right to cease or deny medical treatment.[116]

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[102] Smith, above n 10, 200.
[103] Michael Douglas, above n 58, 633.
[104] Bartels and Otlowski, above n 26, 550.
[105] Lindy Willmott, Ben White and Jocelyn Downie, 'Withholding and Withdrawal of 'futile' lie-sustaining treatment: Unilateral Medical Decision-Making in Australia and New Zealand (20130 20 *Journal of Law and Medicine* 907.
[106] Michael Douglas, above n 58, 633.
[107] Ibid 634.
[108] Bartels and Otlowski, above n 26, 550.
[109] See, eg, *Royall v The Queen* (1991) 172 CLR 378, 459 (McHugh J).
[110] Michael Douglas, above n 58, 635.
[111] Ibid 636.
[112] See, eg, *Crimes Act 1958* (Vic) s 6A.
[113] See, eg, *Advance Personal Planning Act 2014* (NT) s 39.
[114] Bartels and Otlowski, above n 26, 550.
[115] Ibid.
[116] Ibid.

B *Anti-euthanasia*

Setting aside doctrinal arguments based on religious and moral considerations and the importance of preserving sanctity of life, certain/various slippery-slope arguments dominates debates in addition to how euthanasia undermines palliative care advances and compromises historical role of medicos.[117]

Typically, slippery-slope arguments claim that endorsing some premise, doing some action, or adopting some policy will lead to some definite outcome that is generally judged wrong or bad. The slope is slippery because there is no plausible halting points between the initial commitment to a premise, action, or policy, and the resultant bad outcome.[118] Consequently, the desire to avoid such projected future consequences is justification for not taking that first step.[119]

Opponents continuously associate the above rationale with atrocities of the Holocaust.[120] It is understood that Nazi physicians held the belief that some lives were unworthy. Believing it was their moral and ethical duty to murder such persons, euthanasia was tyrannically practiced upon the ill and disabled throughout hospitals evolving into attempted genocide.[121] It is believed, that this account in history demonstrates[122] taking incremental steps[123] on a slippery-slope by legalising voluntary euthanasia, may result in more questionable practices[124] becoming politically, culturally and socially acceptable.[125] Evolving gradually to[126] termination of lives no longer considered socially useful,[127] vulnerable members of society will be placed at great risk.[128]

Proponents however reject that the Nazi extermination policy evolved from voluntary euthanasia. Even if there is some truth in the allegation, it is difficult to see how contemporary notions of voluntary euthanasia,[129] which is heavily grounded on the desire to relieve pain and suffering of autonomous

[117] Werren, Yuksel and Smith, above n 14, 188.
[118] Ibid.
[119] Penney Lewis, 'The Empirical Slippery Slope: From Voluntary to Non-Voluntary Euthanasia' (2007) *Journal of Law, Medicine & Ethics* 197.
[120] Ibid.
[121] Organisation of Rabbis of Australasia, Submission No 34 to Legal and Constitutional Affairs Legislation Committee, *Medical Services (Dying with Dignity) Exposure Draft Bill 2014*, 21 August 2014, 2 <http://www.aph.gov.au/DocumentStore.ashx?id=e539664c-5e2d-4344-94ad-9bdd9c1b9a8c&subId=299751>.
[122] Bagaric, above n 1, 157.
[123] Bartels and Otlowski, above n 26, 550.
[124] Lewis, above n 119, 197.
[125] Werren, Yuksel and Smith, above n 14, 189.
[126] Bartels and Otlowski, above n 26, 550.
[127] Werren, Yuksel and Smith, above n 14, 189.
[128] Bartels and Otlowski, above n 26, 550.
[129] Ibid 553.

patients, should have such abhorrent side-effect.[130] Proponents also opine that the slippery-slope argument is naïve given it proceeds on the assumption that euthanasia is currently not being practiced. Anecdotal evidence exists to disprove this belief as will be canvassed further below. Moreover, despite euthanasia continued practice by medicos and/or loved ones either directly or indirectly albeit in secret, to date[131] there has been no evidence of the slippery-slope existence in Australia.[132]

Opponents also contend that casting medicos into the role of administering euthanasia,[133] not only undermines medical advances[134] but compromises the historical role of doctors as healers thereby eroding the trust and confidence essential for the doctor-patient relationship.[135] Whilst the former argument may have some merit, when euthanasia is required, healing and potential for recovery is already beyond medical capabilities. What therefore remains is an obligation on medicos to relieve pain and suffering which proponents argue is consistent with the integrity and duties of that profession.[136] Accordingly, how, when and what is administered, should be the autonomous choice of the patient.[137]

On balance, the arguments in support for euthanasia and its necessity, far outweighs the theorised arguments raised by opponents. Additionally, many concerns raised by opponents will be better addressed if current dubious practices are brought into the open, regulated and subject to professional and public scrutiny,[138] as opposed to government's current stance of turning a blind eye in the mistaken belief that current blanket prohibitions are effective.[139]

VI WALKING A GREY LINE - MEDICOS

Medical professionals worldwide are bound by one of the oldest binding documents in history,[140] the Hippocratic Oath.[141] The phrase 'first, do no harm' is frequently mistaken to be a component of the oath. However, whilst these words do not explicitly appear, the pledge to 'give no deadly medicine to anyone if

[130] Bagaric, above n 1, 157.
[131] Bartels and Otlowski, above n 26, 550.
[132] Victoria Hiley, *In Pursuit of a Good Death: Responding to Changing Sensibilities in the Context of the Right to Die Debate* (PhD Thesis, The University of Sydney, 2008) 229.
[133] Ibid.
[134] Peter Saunders, *Ten Reasons why Euthanasia should not be legalized,* Right to Life Australia <http://www.righttolife.com.au/index.php/life-issues/euthanasia>.
[135] Cartwright, above n 51, 10.
[136] Bartels and Otlowski, above n 26, 550.
[137] Senate Legal and Constitutional Affairs Legislation Committee, *Medical Services (Dying with Dignity) Exposure Draft Bill*, above n 84, 7.
[138] Lewis, above n 119, 204.
[139] Bartels and Otlowski, above n 26, 550.
[140] Peter Tyson, *The Hippocratic Oath Today* (27 March 2001) Public Broadcasting Service <http://www.pbs.org/wgbh/nova/body/hippocratic-oath-today.html>.
[141] MacLeod, Wilson and Malpas, above n 91, 87.

asked', and to prescribe only beneficial treatments according to a physician's 'abilities and judgment',[142] arguably implies such an obligation.

Euthanasia opponents therefore contend that a medicos training and moral commitment to the oath to care and/or cure,[143] prohibits the doing of harm.[144] Naturally, in their view, it is sacrilegious to deliberately take a patient's life upon request, seeing as it compromises the traditional role of medicos[145] not to mention the professions integrity.[146]

Proponents however vehemently disagree with the above. They argue, at the time of Hippocrates, physician-assisted suicide was not a prohibited practice.[147] Medicos were permitted to provide, and did provide, suffering patients with lethal drugs to end their life because doing so was viewed not only as meeting the needs and/or desire of patients,[148] but it fulfils implied obligation under the oath of 'first do no harm' given that prolonging lives of agonising patients does more harm than good.[149]

Notwithstanding the above, it is generally assumed that any deliberate ending of a person's life upon request, using drugs to accelerate death, is unquestionably euthanasia.[150] But accordingly to some academics, there is a disparity between 'voluntary euthanasia' and` 'physician-assisted suicide'. They argue, that in the case of the latter, whilst the medico provides the means/knowledge to end the patient's life, the final act is not performed by the medico which in their mind establishes euthanasia.[151] From a moral perspective, this argument is distorted. Whether or not the final act is performed by the medico is immaterial, given that the repercussion of providing the means/knowledge results in intention and outcome being one in the same.[152]

[142] Tyson, above n 140.
[143] Margaret Somerville, *Euthanasia Would Hurt Doctors* (2009) Catholic Education Resource Center < http://www.catholiceducation.org/en/controversy/euthanasia-and-assisted-suicide/euthanasia-would-hurt-doctors.html>.
[144] Ronald Lindsay, Rebecca Dick and Tom Beauchamp, 'Hastened Death and the Regulation of the Practice of Medicine' (2006) 22(1) *Washington University Journal of Law and Policy* 22 <http://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1340&context=law_journal_law_policy>.
[145] Bartels and Otlowski, above n 26, 550.
[146] Tyson, above n 140.
[147] Lindsay, Dick and Beauchamp, above n 144.
[148] Ibid.
[149] ProCon, *Top 10 Pros and Cons: Should Euthanasia or Physician-Assisted Suicide be Legal?* (13 December 2013) <http://euthanasia.procon.org/view.resource.php?resourceID=000126>.
[150] Cartwright, above n 51, 3.
[151] Ibid.
[152] Ibid.

As the law currently stands, medicos are only prohibited from taking active steps to end, or help end, a patient's life directly.[153] Medicos are therefore considered to be acting within the parameters of Australian law when they hasten a patient's death via the provision of medication to relieve pain and suffering. Consequently, despite the conduct exhibiting all the characteristics of euthanasia,[154] medicos appear to be vindicated and relieved from criminal liability as will be demonstrated below.

A *[D]eath, a necessary end, will come when it will come*[155]

1 *Doctrine of Double-effect*

An issue debated at length[156] by philosophers,[157] lawyers and medicos is whether high doses of morphine has the capacity of hastening death in terminal patients.[158] No definitive clinical scientific evidence exists to evince[159] morphine's ability to cause death.[160] Consequently, whilst some medicos believe morphine has the ability to depress activity[161] in the brain's respiratory centre causing[162] decreased breathing rate,[163] which ultimately leads to death,[164] others opine that large doses of morphine actually prolongs a terminal patients life rather than the opposite.[165] Opponents therefore maintain that it is erroneous to believe that excessive quantities of morphine, is the cause of death in many patients. In their view, long-term patients build a high tolerance to medication over time hence require increasingly higher doses as their illness progresses.[166]

Setting aside the above, the practice of 'terminal sedation'[167] or 'slow euthanasia',[168] as it is often termed,[169] has been generally accepted in law due to the necessity of certain medical interventions for

[153] Natasha Circa, 'Euthanasia – the Australian Law in an International Context' (Research Paper No 4, Parliamentary Library, Parliament of Australia, 1996-97).
[154] MacLeod, Wilson and Malpas, above n 91, 88.
[155] William Shakespeare, 'The Life and Death of Julius Caesar', Act 2, Scene 2.
[156] Benjamin White, Lindy Willmott and Michael Ashby, 'Palliative Care: Double-effect and the Law in Australia' (2011) 41(6) *Internal Medicine Journal* 485, 486.
[157] Robert Young, *Medically Assisted Death* (Cambridge University Press, 2007).
[158] Life Resources Charitable Trust, *The 'Principle of Double-effect'* (2011) <http://www.life.org.nz/euthanasia/euthanasiaethicalkeyissues/double-effect/>.
[159] MacLeod, Wilson and Malpas, above n 91, 90.
[160] White, Willmott and Ashby, above n 156, 487.
[161] Ronald Stephens, 'The Moral Meaning of Morphine Drips: A Modern Shibboleth Denied' *The Midwest Quarterly* 346, 351.
[162] Smith, above n 10, 206.
[163] Laura Spinney, 'Last Rights: If Someone Wants Help to End their Life' (2005) 186(2496) *New Scientist* 46.
[164] Wayne Jarred, 'The Care of Terminally-ill Patients Bill 2002 (Qld): Clarifying the Right of Medical Practitioners to Administer Treatment' (Research Paper No 29, Parliamentary Library, Senate, 2002) 20.
[165] Hiley, above n 132.
[166] Life Resources Charitable Trust, above n 158.
[167] Richard Huxtable, 'Get out of Jail Free? The Doctrine of Double-effect in English Law' (2004) 18 *Palliative Medicine* 62.

pain relief,[170] notwithstanding that death may possibly ensue. Known amongst medicos as the 'doctrine of double-effect' ('Doctrine'), its origin is linked to Roman Catholic moral theologians of the 16th and 17th centuries, who accept it is sometimes morally justifiable[171] to cause evil in the pursuit of good.[172]

Accordingly, provided the following four elements of the Doctrine are satisfied,[173] it is ethically permissible[174] to perform the act which has both good and bad effect.[175] Firstly, the act is good in itself, or at least ethically neutral. Secondly, the good effect is not obtained by means of the bad effect. Thirdly, the bad effect, although foreseen, is not intended for itself, but only permitted. Finally, there is a proportionately grave reason for permitting the bad effect.[176]

The Doctrine became accepted as part of English law following Devlin J's judgment in *R v Bodkin-Adams.*[177] The defendant, a Doctor John Bodkin-Adams, was charged with murdering an eighty-one year old patient named Mrs Morrell, who suffered from cerebral arteriosclerosis and the aftermath of a stroke.[178] The prosecution alleged that Bodkin-Adams prescribed and administered large quantities of barbituates, diamorphine and morphine for pain-relief, in circumstances wherein he ought to have known death would result. Justice Devlin took four hours to sum up the case for the jury and of note, stated:

> Murder is an act or series of acts done … which was intended to kill … and did in fact kill ... It does not matter … death was inevitable … If her life were cut short by weeks or months; it was just as much murder as if it was cut short by years. There has been much discussion as to when doctors might be justified in administering drugs which would shorten life. Cases of severe pain were suggested and also cases of helpless misery. The law knows no special defence in this category.[179]
>
> … but that does not mean that a doctor who was aiding the sick and dying had to calculate in minutes, or even hours, perhaps, not in days or weeks, the effect on a patient's life of the medicines which he could

[168] Margaret Somerville, 'Euthanasia by Confusion' (1997) 20(3) *University of New South Wales Law Journal* 550, 558.
[169] Charles Douglas, Ian Kerridge and Rachel Ankeny, 'Managing Intention: The End-of-life Administration of Analgesics and Sedatives, and the Possibility of Slow Euthanasia' (2008) 27(7) *Bioethics* 388, 393.
[170] White, Willmott and Ashby, above n 156, 487.
[171] Douglas, Kerridge and Ankeny, above n 169, 394.
[172] Fraser and Walters, above n 39, 122.
[173] Rita Marker, 'End-of-Life Decisions and Double Effect – How Can This be Wrong When It Feels so Right' (2011) *The National Catholic Bioethics Quarterly* 101 <http://www.patientsrightscouncil.org/site/wp-content/uploads/2012/03/NCBQ_11_1_8_MarkerArticle_99-119.pdf>.
[174] Life Resources Charitable Trust, above n 158.
[175] Steele and Worswick, above n 15, 418.
[176] Marker, above n 173.
[177] *R v Bodkin-Adams* [1956] Crim LR 365.
[178] Huxtable, above n 167, 63.
[179] *R v Bodkin-Adams* [1956] Crim LR 365.

> administer. If the first purpose of medicine - the restoration of health - could no longer be achieved there was still much for the doctor to do and he was entitled to do all that was proper and necessary to relieve pain and suffering even if the measures he took might incidentally shorten life by hours or perhaps even longer. The doctor who decided whether or not to administer the drugs could not do his job, if he were thinking in terms of hours or months of life. Dr Adams's defence was that the treatment was designed to promote comfort and if it was the right and proper treatment the fact that it shortened life did not convict him of murder.[180]

Concurring with Devlin J's summation,[181] Bodkin-Adams was naturally acquitted of Mrs Morrell's murder by a jury of his peers.[182]

In the wake of *R v Bodkin-Adams*,[183] medicos throughout the United Kingdom[184] are protected[185] if they administer[186] high doses of medication with the primary intent[187] of relieving pain[188] and suffering,[189] in circumstances wherein they should have been reasonably aware that doing so may have a 'double-effect'[190] of hastening[191] or causing[192] the patient's death.[193] That said, the Doctrine is not a blanket justification.[194] Its applicability is heavily reliant on the distinction between impermissible intended consequences, and permissible merely foreseen consequences.[195] That is to say, intention and reasonableness of the medico's conduct is crucial in judging the moral correctness of a medico's action, based on Roman Catholic ideologies that it is never permissible to 'intend'[196] the death of an 'innocent person'.[197] Accordingly, if a medico hangs a morphine drip with the *mens rea* of intending the patient's death,[198] this intention is indefensible under principles of the Doctrine.[199]

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[180] Ibid 375.
[181] Huxtable, above n 167, 63.
[182] Prema Matker, *Analysing Restrictive and Liberal Approaches Towards Assisted Suicide and Euthanasia* (MPhil Thesis, University of London, 2010) 74.
[183] *R v Bodkin-Adams* [1956] Crim LR 365.
[184] Steele and Worswick, above n 15, 418.
[185] Ibid.
[186] Andrew McGee, 'Double-effect in the Criminal Code 1899 (Qld): A Critical Appraisal' (2004) 4(1) *Queensland University of Technology Law and Justice Journal* 46, 47.
[187] Douglas, Kerridge and Ankeny, above n 169, 393.
[188] Lindy Willmott and Greg Shoebridge, 'Medical Professionals – Proposed Protection: Doctrine of Double-effect' (2003) 23 *The Queensland Lawyer* 96, 97.
[189] Huxtable, above n 167, 63.
[190] Fraser and Walters, above n 39, 122.
[191] Stephens, above n 161, 356.
[192] Jarred, above n 164, 6.
[193] *R v Bodkin-Adams* [1957] Crim LR 365; *Airedale NHST v. Bland* [1993] AC 789.
[194] Willmott and Shoebridge, above n 188, 97.
[195] Huxtable, above n 167, 62.
[196] Stanford Encyclopedia of Philosophy, *Doctrine of Double Effect* (23 September 2014) <http://plato.stanford.edu/entries/double-effect/>.
[197] Dying with Dignity New South Wales, *The Principle of 'Double-effect'* <http://dwdnsw.org.au/the-principle-of-double-effect/
[198] Somerville, 'Euthanasia by Confusion', above n 168, 560.

2 *Dent versus Wild*

In order to appreciate the similarity between euthanasia and the Doctrine, regard must be had to two unlike treatments of two individuals in Australia, in dissimilar legal circumstances.

Bob Dent and Esther Wild were both diagnosed with terminal cancer. From the information available, both suffered from severe pain as a result of their diagnosis. Assessed as being of sound mind, both persistently requested assistance in dying and were evaluated as having made their request in the absence of duress or any mental incapacity.[200]

Dent made history in becoming the first person to die peacefully and legally under the *ROTA* on 22 September 1996,[201] with the assistance of controversial euthanasia activist, Doctor Philip Nitschke.[202]

Wild unfortunately could not avail rights under the *ROTA*, owing to the Commonwealth vetoing its validity on 24 March 1997. Forced instead to go down the path of 'slow euthanasia', Wild received an infusion of drugs which placed her in a medically induced coma known as ‘pharmacological oblivion’,[203] to ensure she was unaware of her suffering.[204] After four days, Wild died on 18 April 1997.[205]

Objectively, there is little difference between the two deaths. The sole discrepancy being time and the method of assistance from one that is now illegal, to one which is quasi-legal.[206] Consequently, many consider Wild's death highly controversial. Proponents strongly opine that medicos know full well what they are doing when they increase doses of medication.[207] That is, the loophole that is the Doctrine[208] was essentially employed to hasten Wild’s death.[209] To a layperson, Wild’s medicos conduct amounts to euthanasia in breach of Australian law. An acceptable assumption, however that same layperson will undeniably consider it deceptive, not to mention hypocritical, that the medico’s conduct is in fact lawful and

[199] Ibid 558.
[200] Rodney Syme, 'A Tale of Two Deaths' (2010) *South Australian Voluntary Euthanasia Society* <http://www.saves.asn.au/archives/resources/collection/col18.php>.
[201] Fraser and Walters, above n 39, 121.
[202] Dunnett, above n 5, 4.
[203] Syme, above n 200.
[204] Dunnett, above n 5, 17.
[205] Syme, above n 200.
[206] Ibid.
[207] Dunnett, above n 5, 17.
[208] Ibid 4.
[209] Julie Medew, 'Euthanasia: A Question of Trust', *Sydney Morning Herald* (online), 12 November 2014 <http://www.smh.com.au/action/printArticle?id=63123512>.

deemed 'good medical practice,'[210] seeing as Wild's death was secondary to the primary intent of relieving her pain and suffering.[211]

3 *Applicability in Australia*

Whilst the Doctrine has been accepted as part of law in the United Kingdom,[212] it remains unclear whether the Doctrine would operate within the parameters of Australian[213] criminal laws. To date, the Doctrine has remained untested[214] in Australia.[215] Several academics insinuate that because legal officials rarely, if at all, doubt the innocence and intentions of medicos whenever analgesics are used, cases pertaining to the Doctrine have never come to light.[216] However, considering medicos cannot, and arguably will not, provide surety that analgesics are never causative of death, this proposition is indisputably unethical if proven true.[217]

Notwithstanding the above, it is highly logical that Australia's judiciary will endorse and adopt the Doctrine as part of its common law,[218] considering judicial endorsements from the United States,[219] Canada,[220] and New Zealand[221] are highly persuasive, owing to similarities with Australia's legal system.[222] Be that as it may, South Australia, Queensland and Western Australia have been proactive, having already introduced statutory defences akin to the Doctrine, albeit less robust.[223] In South Australia, despite the common law Doctrine possibly having some significance if accepted by the judiciary,[224] being a codeless state, it introduced standalone legislation[225] exempting[226] health professionals who provide palliative care from criminal liability. Accordingly, if medical treatment is administered on a patient in the terminal phase of that patient's illness, intending only to relieve pain and distress but incidentally hastens death,[227] so long as it

[210] Syme, above n 200.
[211] Dunnett, above n 5, 5.
[212] *R v Bodkin-Adams* [1956] Crim LR 365.
[213] Huxtable, above n 167, 63.
[214] Hiley, above n 132, 33.
[215] Steele and Worswick, above n 15, 418.
[216] Huxtable, above n 167, 62.
[217] Ibid.
[218] White, Willmott and Ashby, above n 156, 487.
[219] See, eg, *Vacco v Quill* 521 US 703 (1997); *Washington v Glucksberg* 521 US 702 (1997).
[220] See, eg, *Rodriguez v British Columbia (Attorney-General)* [1993] 3 SCR 519.
[221] See, eg, *Auckland Area Health Board v Attorney-General* [1993] 1 NZLR 235.
[222] White, Willmott and Ashby, above n 156, 487.
[223] Ibid 491.
[224] Ibid 488.
[225] *Consent to Medical Treatment and Palliative Care Act 1995* (SA).
[226] Bartels and Otlowski, above n 26, 541.
[227] Willmott, White and Downie, above n 105, 919.

was done with consent, in good faith, without negligence, and in accordance with proper professional standards,[228] no liability ensues.

In contrast, prior to amendments, both Queensland and Western Australia's criminal codes contained comparable provisions which prevailed over the common law Doctrine, even if accepted by the judiciary. For example, s 296 of the *Criminal Code Act 1988* (Qld) specifically provides that any 'person who does any act or makes any omission which hastens the death of another person who, when the act is done or the omission is made, is labouring under some disorder or disease arising from another cause, is deemed to have killed that other person'.[229] As a result, even though the medico's primary intent was to alleviate the patient's pain and suffering,[230] if death incidentally ensues, he/she will be guilty of murder. Indisputably of hindrance to medicos caring for the terminally ill, analogous amendments were introduced into the Queensland[231] and Western Australian[232] criminal codes to exempt medicos from criminal responsibility, where the medical care and/or palliative care, having regard to all the circumstances, was administered in good faith and with reasonable care and skill,[233] in the context of good medical practice.[234]

To date, Northern Territory's *Criminal Code Act 1983* (NT) ('*NT Code*') does not contain comparative provisions clarifying its position in similar circumstances, which is problematic given the codification of criminal responsibility.[235] As the law currently stands, a medico who unintentionally hastens a patient's death by administering medication which he/she considers indispensable, will be deemed to have unlawfully killed that patient regardless of that patient's prognosis.[236] Then again, perhaps no liability will ensue. Section 156 of the *NT Code* provides that persons are only guilty of murder if they engage in conduct that causes the death of another, and that person *intended* to cause death or serious harm to that person by that conduct.[237]

Based on the elements above, medicos who engage in conduct amounting to the Doctrine are perhaps absolved from murder, given the absence of *intention* to cause death or serious harm. Then again, whilst a murder indictment may fail in the absence of intention, manslaughter may be substantiated in the

[228] *Consent to Medical Treatment and Palliative Care Act 1995* (SA) s 17(1).
[229] *Criminal Code Act 1988* (Qld) s 296.
[230] McGee, above n 186, 48.
[231] *Criminal Code (Palliative Care) Amendment Act* 2003.
[232] *Acts Amendment (Abortion) Act 1998* (WA).
[233] *Criminal Code Act* 1899 (Qld) s 282A(1); *Criminal Code Act Compilation Act 1913* (WA) s 259(1).
[234] *Criminal Code Act* 1899 (Qld) s 282A(5)(a)-(b).
[235] White, Willmott and Ashby, above n 156, 487.
[236] Hiley, above n 132.
[237] *Criminal Code Act 1983* (NT).

alternative if the conduct is considered reckless and/or negligent.[238] Moreover, s 26(3) of the *NT Code* provides that 'a person cannot authorise or permit another to kill him', which section also potentially places medicos and/or family members at risk, when acceding to requests of those suffering.[239] Given there are perhaps other discrepancies apart from these already identified, legislative certainty is categorically required in Northern Territory.[240]

As an aside, several medicos have demonstrated an openness in embracing the Doctrine considering it extensively protects them from liability, in circumstances where a patient's death is suspicious, or in some instances unexpected. Others however have been exceptionally unreceptive given their belief that its adoption as a defence in Australia, would imply that medicos are sometimes murderers, albeit justified murderers.[241] Accordingly, if the former view prevails, the Doctrines reception into Australia's common law provides proponents with added ammunition in their pursuit to legalise euthanasia. In their view, no meaningful distinction exists between euthanasia and the provision of excessive pain relief knowing that doing so undeniably accelerates the patient's death. Undoubtedly a persuasive and coherent argument, if this notion is accepted as being factually accurate, what is otherwise allowed, termed and cloaked[242] as the Doctrine is, for all intents and purposes, 'back-door' euthanasia.[243]

4 *Is guidance or law needed?*

Based on the above, it is arguably fair to say that the line dividing euthanasia from the Doctrine is not as transparent as one originally assumes. A wealth of anecdotal evidence[244] suggests that covert euthanasia occurs under the pretence of the Doctrine.[245] Moreover, given there is a body of conflicting data on the effect of morphine on terminally ill patients,[246] there is, without doubt, scope to classify the Doctrine as a form of euthanasia.

Opponents vehemently disagree with the above proposition. They opine that there is a valid distinction between intentional killing and merely foreseeing death as a possible side-effect of treatment.[247] Relying

[238] *Criminal Code Act 1983* (NT) s 160.
[239] Bartels and Otlowski, above n 26, 534
[240] Colin Thomson, 'Death, a Necessary End, Will Come when It will Come' (2011) 41 *Internal Medicine Journal* 439, 440.
[241] Huxtable, above n 167, 62.
[242] Jarred, above n 164, 24.
[243] McGee, above n 186, 46.
[244] Huxtable, above n 167, 64.
[245] Douglas, Kerridge and Ankeny, above n 169, 395.
[246] Life Resources Charitable Trust, above n 158.
[247] Huxtable, above n 167, 62.

heavily on the purpose and intent of treatments,[248] any incidental side-effect[249] from administering medication to relieve pain and suffering is, in their opinion, irreconcilable[250] with euthanasia[251] since with euthanasia, death is always intended. Whereas under the Doctrine, because 'foreseen events are not always intended',[252] the patient's death is merely incidental.[253] The temporal lag between providing pain relief and death is therefore instrumental in differentiating euthanasia from the Doctrine. In short,[254] the Doctrine is an exception in circumstances wherein an individual would ordinarily be held accountable, given the consequence was anticipatable.[255]

Proponents fervently refute the above rationale. As intimated above, they opine that the Doctrine is merely a façade used to legitimise the excessive use of morphine by medicos who administer it in the knowledge that death will likely eventuate.[256] They propose that if medication is administered in the knowledge that the patient's death may be accelerated by hours, days or weeks, that treatment is administered in that knowledge[257] which intent extends beyond merely alleviating that patient's pain and suffering. Put another way, imagine the following hypothetical scenario. Suppose you are suffering intolerably from a terminal illness. If your medico, administers upon you medication without exhaustively disclosing his/her knowledge that it has the capacity to hasten your death, or which indeed causes your death instantaneously, where is the distinction between intending to relieve your pain and suffering on the one hand, and intending to kill you on the other?

In the view of some philosophers, arguments justifying the Doctrine are viewed too clever for its own good.[258] It is unquestionable that the Doctrine provides for a double-standard[259] by allowing medicos who oppose euthanasia to act hypocritically, via exploiting the permissibility of administering medication for pain relief when in fact their primary intent is to kill the patient.[260] Undeniably, there is a fine-line between providing comfort to patients, and actually giving medication which has the capacity to hasten and/or

[248] Ibid 65.
[249] Fraser and Walters, above n 39, 122.
[250] Huxtable, above n 167, 66.
[251] Cartwright, above n 51, 3.
[252] McGee, above n 186, 56.
[253] Ibid 55.
[254] Ibid 56.
[255] Ibid.
[256] Jarred, above n 164, 24.
[257] McGee, above n 186, 52.
[258] BBC News, 'The Doctrine of Double Effect' (2014) <http://www.bbc.co.uk/ethics/euthanasia/overview/doubleeffect.shtml>.
[259] Fraser and Walters, above 39, 122.
[260] Andrew Shaw, 'Two Challenges to the Double-effect Doctrine: Euthanasia and Abortion' (2002) 28 *Journal of Medical Ethics* 102, 103.

instigate death.[261] There is anecdotal evidence evincing that several medicos have admitted to hiding behind the Doctrine, in order to justify their actions. In dire situations where a patient's death is imminent, medicos have expressed that it is often difficult to differentiate whether the dose of morphine last administered was the actual cause of the respiratory compromise and hastened death of the patient,[262] or whether the patient's life had finally come to an end.[263] To this end, without a doubt, the Doctrine has become significant psychologically to medicos, which arguably implies that they too consider their questionable conduct to be somewhat wrong and/or unethical.[264]

The above establishes that the Doctrine is applied in a selective and arbitrary way[265] given the distinction between intended and foreseen consequences is fictional. Accordingly, on the premise that the line of reasoning of proponents far outweighs that of opponents, appropriate euthanasia laws should be introduced to resolve existing law's discrepancy, which currently permits what is unequivocally involuntary euthanasia,[266] while criminalising voluntary euthanasia.[267]

B *Physician-Assisted Suicide*

1 *Turning a Blind Eye?*

In addition to the above, medicos have also been linked to what is otherwise known as 'physician-assisted suicide'. While the reliability of independent studies[268] has often been questioned,[269] a study conducted in 2001 amongst Australian medicos indicates[270] that approximately one-third have,[271] for many years, commonly assisted patients to die either directly or indirectly,[272] albeit in an illegal environment.[273] Of the medicos surveyed:

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[261] Judith Schwarz, 'The Rule of Double-effect and Its Role in Facilitating Good End-of-Life Palliative Care' (2004) 6(2) *Journal of Hospice and Palliative Nursing* <http://www.medscape.com/viewarticle/474834_8>.
[262] Stephens, above n 161, 356.
[263] Schwarz, above n 261.
[264] Shaw, above n 260, 103.
[265] Ibid 102.
[266] James Fieser, *Euthanasia* (1 January 2015) University of Tennessee <https://www.utm.edu/staff/jfieser/class/160/6-euthanasia.htm>.
[267] McGee, above 186, 49.
[268] Prichard, above n 94, 618.
[269] Neville Hicks, 'The Quality of Death: Euthanasia in Australia' (1998) 24(2) *Journal of Medical Ethics* 141.
[270] Bartels and Otlowski, above n 26, 550.
[271] Prichard, above 94, 618.
[272] Hicks, above n 269, 141.
[273] David Swanton, *Arguments for Euthanasia* (2015) Ethical Rights <http://www.ethicalrights.com/submissions/euthanasia/92-arguments-in-support-of-euthanasia.html>.

- 36.2 per cent reported that they had given medication in doses greater than was necessary to relieve symptoms with the intention of hastening death;
- 20.4 per cent reported that they had given medication with the intention of hastening death, but without the explicit request of the patient;
- 1.9 per cent reported assisting with a suicide; and
- 4.2 per cent reported having acceded to request for voluntary euthanasia.[274]

Despite the above admissions, no serious efforts[275] have been made to impede medicos,[276] let alone prosecute them,[277] which is perplexing given that each conduct is essentially euthanasia, or a variation of it. It is alleged that the reluctance in indicting may perhaps be related to prosecutors believing that sympathetic juries will be reluctant to convict[278] medicos, who are perceived to be 'doing their best' in an area of law which is archaic and unclear.[279] Then again, in the handful of précised cases appearing below, successful prosecution appears impeded by evidentiary difficulties.

2 *Case examples*

Firstly, in the case of Urologist and avid voluntary euthanasia campaigner Doctor Rodney Syme, Syme confessed to being one of seven Melbourne doctors[280] who has, over a decade, actively assisted people to overcome euthanasia laws by providing advice on how to end one's own life.[281] Steve Guest suffered from intolerable physical, psychological and existential pain as a result of oesophageal cancer. Risking prosecution in April 2014, Syme publically admitted to providing Guest with the lethal drug Nembutal in 2005, two weeks prior to his death.[282] It is understood, Syme's confession was motivated by his discontent

[274] Charles Douglas, 'The Intention to Hasten Death: A Survey of Attitudes and Practices of Surgeons in Australia' (2001) 175(10) *Medical Journal of Australia* 511.
[275] Hiley, above n 132, 53.
[276] Alan Rothschild, 'Just When you Thought the Euthanasia Debate had Died' (2008) 5(69) *Bioethical Inquiry* 71, 76.
[277] Circa, above n 153, 9.
[278] Hiley, above n 132, 55.
[279] Loane Skene, *Law and Medical Practice: Rights, Duties, Claims and Defences* (LexisNexis Butterworths, 3rd ed, 2008) 287.
[280] Chloe Saltau and Theresa Ambrose, *A Story of Terminal Sedation* (7 March 2001) The World Federation of Right to Die Societies <http://www.worldrtd.net/story-terminal-sedation>.
[281] Julie Medew, 'Euthanasia: A Question of Trust', above n 209.
[282] Julie Medew, 'Doctor Admits Giving Dying Man the Drugs to End his Life' *The Age* (online) 28 April 2014 <http://www.theage.com.au/victoria/doctor-admits-giving-dying-man-the-drugs-to-end-his-life-20140427-zr07i.html>.

with Parliament rejecting sixteen euthanasia Bills,[283] and his desire for a jury of his peers to determine, once and for all, whether his conduct rendered him 'a criminal or a good doctor'.[284]

Victoria criminalises inciting, aiding or abetting suicide. Naturally, the police interviewed Syme over his alleged involvement in Guest's death. Syme denied having encouraged or incited Guest to end his life, but did admit to providing Guest with 'control' over the timing and nature of his death.[285] However, despite Syme's admission, in the absence of tangible evidence[286] legal action was not pursued against Syme, who was championed by proponents as having acted in the best interests of his patient.[287]

In contrast to the above, several years earlier in 2000 there was one attempt to prosecute a Western Australian doctor for wilful murder,[288] and the crime of assisting suicide.[289] Doctor Daryl Stephens was accused of causing the death of Freeda Haye's, who was dying from kidney cancer, by intravenously injecting her with a cocktail of atracurium and midazolam. Several people, including Stephens, were present at the time she died.[290] The medication Stephens is alleged to have administered, essentially paralysed Hayes' breathing, which eventuated in her death. Again, in the absence of conclusive evidence, causation could not be established. Deliberations lasted ten minutes before a jury declared there was insufficient evidence to prove beyond reasonable doubt that Stephens killed Hayes, or assisted in her suicide.[291]

Lastly, the final example involving Doctor Philip Nitschke, challenges all of the above being unique in itself. A renown euthanasia advocate, Nitschke has been implicated and vindicated[292] on several occasions regarding his involvement in several deaths of terminal patients,[293] due to lack of evidence. However, more recently, Nitschke is accused of moving into uncharted territory by agreeing to assist Nigel Brayley in

[283] Julie Medew, 'Euthanasia Advocate Rodney Syme Interviewed by Police over Death Drug Confession' *The Age* (online) 22 October 2014 <http://www.theage.com.au/victoria/euthanasia-advocate-rodney-syme-interviewed-by-police-over-death-drug-confession-20141022-119t9b.html#ixzz3Gvddm16I>.
[284] Norman Hermant, 'Euthanasia Debate: Doctor Confirms he Helped Patient Die, Wants to be Charged' *ABC News* (online) 8 May 2014 <http://www.abc.net.au/news/2014-05-07/doctor-confirms-he-helped-patient-die/5437686>.
[285] Julie Medew, 'Euthanasia Advocate Rodney Syme Interviewed by Police', above n 283.
[286] Julie-Anne Davies, 'Right to Die: Choosing an End to Life' *Sydney Morning Herald* (online) 10 November 2014 <http://www.smh.com.au/national/right-to-die-choosing-an-end-to-life-20141110-11jlu1.html>.
[287] Swanton, above n 273.
[288] *Criminal Code Act Compilation Act 1913* (WA) s 278.
[289] Ibid s 290.
[290] Hiley, above n 132, 56.
[291] Ibid.
[292] Ibid 34.
[293] Saltau and Ambrose, above n 280.

his suicide, despite knowing he was not terminally ill.[294] Brayley died in May 2014,[295] following purchasing a suicide 'how-to' guide from Exit International, an organisation founded by Nitschke, and then illegally procuring Nembutal from China.[296] In defending his actions, Nitschke maintains he had no obligation to persuade Brayley to reconsider, given that Brayley was of sound mind when he made the decision to die.[297]

As a result of Nitschke's conduct, the Medical Board of Australia used its emergency power to suspend Nitschke's medical licence in July 2014. The matter was then referred to Northern Territory's Health Professional Review Tribunal ('Tribunal'),[298] who ruled in-line with the Board in upholding Nitschke's suspension given that in their opinion, Nitschke posed a serious risk to the public and could undermine confidence in the medical profession.[299]

Nitschke's professional misconduct hearing before the Tribunal is scheduled for July of this year. In the interim, Nitschke has appealed to the Northern Territory Supreme Court challenging the Tribunal's decision in upholding the Board's suspension, which hearing is currently ongoing.[300]

It remains to be seen whether Nitschke's involvement in Brayley's suicide will result in legal consequences, and closure on physician-assisted suicide. That said, Brayley's suicide is unique to atypical cases of assisting terminally ill patients. Presumably, Brayley's 'rational suicide' will not be condoned. Whilst proponents are prepared to endorse the right of a terminally ill patient to request to be euthanised, taking that step towards substantiating the right for mentally incompetent, but not terminally ill persons to be euthanised, is arguably taking that one step too far towards substantiating the slippery-slope argument.

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[294] Caitlyn Gribbin, 'Euthanasia Advocate Philip Nitschke Criticised Over Support for 45 Year Old who Committed Suicide' *ABC News* (online) 5 July 2014 <http://www.abc.net.au/news/2014-07-03/nitschke-criticised-over-45yo-mans-suicide/5570162>.
[295] Calla Wahlquist, 'Nigel Brayley's Wife Defends Her Husband Against Accusations of Foul Play in Lina Brayley's Death' *Perth Now* (online) 19 May 2014 <http://www.perthnow.com.au/news/western-australia/nigel-brayleys-wife-defends-her-husband-against-accusations-of-foul-play-in-lina-brayleys-death/story-fnhocxo3-1226922419337>.
[296] Paul Biegler, *Memo to Philip Nitschke: Let's Keep Euthanasia for the Dying* (8 July 2014) The Conversation <http://theconversation.com/memo-to-philip-nitschke-lets-keep-euthanasia-for-the-dying-28846>.
[297] Gribbin, 'Euthanasia Advocate Philip Nitschke Criticised', above n 294.
[298] Caitlyn Gribbin, 'Philip Nitschke: Professional Misconduct Complaints Referred to NT Health Tribunal' *ABC News* (online) 10 November 2014 <http://www.abc.net.au/news/2014-11-10/misconduct-complaints-against-nitschke-referred-to-tribunal/5880414>.
[299] Julia Medew, 'Euthanasia Activist Philip Nitschke Loses Legal Battle to Practice Medicine' *Sydney Morning Herald* (online) 7 January 2015 <http://www.smh.com.au/national/health/euthanasia-activist-philip-nitschke-loses-legal-battle-to-practice-medicine-20150107-12jm6r.html>.
[300] Shelley Hadfield, 'Euthanasia Campaigner Philip Nitschke in Court bid to Overturn Medical Licence Suspension' *Herald Sun* (online) 31 March 2015 <http://www.heraldsun.com.au/news/law-order/euthanasia-campaigner-philip-nitschke-in-court-bid-to-overturn-medical-licence-suspension/story-fni0fee2-1227285364599>.

3 *Is guidance or law needed?*

The examples above substantiate that voluntary euthanasia, or physician-assisted suicide, occurs throughout Australia whether by act, as in the case of Stephens, or omission, as per Syme and Nitschke's example, despite its criminalisation.[301] The lack of success and/or reluctance shown by government in prosecuting medicos who engage in physician-assisted suicide, perhaps validates their acceptance of the practice.[302] If true, this is an infuriating assumption for proponents since assisting suicide is unlawful, and government have been persistently hostile in legalising euthanasia.[303]

Law reform is certainly overdue, not only in Northern Territory but in every Australian jurisdiction. Medicos who currently work in murky grey zones undeniably need and deserve certainty so they can practice without fear of prosecution.[304] The irony, hypocrisy and stupidity the law maintains,[305] undoubtedly undermines public confidence in the criminal law.[306] As a matter of public policy, it is more preferable to have voluntary euthanasia tolerated in particular circumstances with stringent safeguards[307] and a degree of transparency, than retaining current blanket prohibitions while allowing it to be carried out in secret and without controls.[308] In short, continuing to ignore the seriousness of the issue and allowing it to operate unregulated provides greater scope for misuse and abuse, placing vulnerable Australians at greater risk than legalising euthanasia.[309]

VII BETWEEN A ROCK AND A HARD PLACE

A *Mercy Killings*

Medicos are not alone[310] in attempting to evade euthanasia laws. Family members placed in impossible situations have also openly admitted to assisting loved ones to take their own life out of love and compassion,[311] notwithstanding knowing[312] that it is a culpable offence in every Australian jurisdiction.[313]

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[301] Prichard, above n 94, 618.
[302] Werren, Yuksel and Smith, above n 14, 188.
[303] Swanton, above n 273.
[304] Saltau and Ambrose, above n 280.
[305] Ibid.
[306] Prichard, above n 94, 618.
[307] Rothschild, above n 276, 77.
[308] Senate Legal and Constitutional Legislation Committee, *Euthanasia Laws Bill*, above n 45.
[309] Magnusson, '"Underground Euthanasia" and the Harm Minimization Debate', above n 88, 489.
[310] Peter Baume and Emma O'Malley, 'Euthanasia: Attitudes and Practices of Medical Practitioners' (1994) 161 *The Medical Journal of Australia* 137.
[311] Hiley, above n 132, 53.
[312] Roger Magnusson, *Angels of Death: Exploring Euthanasia Underground* (Melbourne University Press, 2002).
[313] Rothschild, above n 276, 73.

Consequently, in determining guilt or innocence, it is of no weight whether or not the accused acted selflessly. Likewise, no significance is assigned to the victim's terminal illness, nor the fact the victim demanded to be killed.[314]

Notwithstanding the above, prosecution of loved ones engaging in euthanasia or assisted suicide, are surprisingly rarely pursued.[315] That said, in rare instances where loved ones have been indicted, the précis below demonstrates that cases of 'mercy killings' are generally dealt with more compassionately than one would envisage, despite the criminalisation of aiding/abetting suicide.

B *Case Examples*

R v Hood[316] is a leading case in 'mercy killings' cited time and time again. Raymond Hood pleaded guilty to aiding or abetting his HIV positive partner Daryl Colley to commit suicide on 21 April 2001 in Victoria. Colley was adamant that he wanted to die with dignity.[317] Hood was present when Colley ingested numerous tablets. When the medication failed to have its desired effect, Hood attempted to suffocate Colley but could not finish the act. Nevertheless, Colley ultimately died, but from combined drug toxicity.

In *obiter*, Justice Coldrey made clear it was 'not the function of this Court to enter upon any debate on the subject of euthanasia', hence attention 'must be directed to the current state of the law'.[318] His Honour then went on to make the following statement, which has become instrumental in comparable Australian cases:[319]

> This offence remains on the statute books because the importance of human life, and its preservation, is a fundamental principle of our society. … often encapsulated in the phrase "the sanctity of human life". This law is also designed to protect a vulnerable person who opts for suicide at a time when extreme depression, … may provoke an irrational and emotional decision by that person to end their life. To this extent, the law may be seen as life affirming and not life denying and directed at discouraging suicide as a response to the emotional vicissitudes of life.[320]
>
> The degree of moral blame attributable to a person who assists or encourages an act of suicide may vary greatly from case to case. At one end of the spectrum may be placed a person who assists or encourages a

[314] Ibid.
[315] Hiley, above n 132.
[316] *R v Hood* [2002] VSC 123.
[317] Ibid 123 [12].
[318] Ibid 123 [31].
[319] See, eg, *R v Godfrey* (Unreported, Supreme Court of Tasmania, Underwood J, 26 May 2004).
[320] *R v Hood* [2002] VSC 123 [32].

> person to commit suicide in order to inherit property or for some other ulterior motive; at the other end there is the individual who supplies potentially lethal medication to a terminally ill person, perhaps a loved one who is in extreme pain and who wishes to end that suffering at the earliest possible opportunity.[321]

Notwithstanding Coldrey J considering Hood's act belonged towards the latter end of the above spectrum,[322] he nevertheless acknowledged that law required a conviction so as to deter others from engaging in similar conduct. However, in deciding Colley's sentence, Coldrey J opined that thoughtful members of the community who knew all the facts and circumstances, would regard Colley's immediate imprisonment unnecessary.[323] Eighteen months imprisonment was therefore imposed, but suspended in it's entirely.[324]

A year later in August 2002, Fred Thompson presented himself to the New South Wales police, confessing to killing his 43 year old wife Katerina upon her request, by giving her six sleeping tablets and then smothering her.[325] Katerina suffered from multiple sclerosis and required round-the-clock care which Thompson provided for fifteen years.

Thompson's case presented a dilemma for both the Director of Public Prosecutions ('DPP') and public defender, being the first case of its kind.[326] Ultimately, the uniqueness of the circumstances persuaded the DPP to acknowledge that whilst ordinarily the intentional killing of a person by another is categorically murder, the evidence supported the view that the deceased wished to die but required assistance to do so, being so severely disabled.[327] A guilty plea to the lesser offence of aiding suicide was therefore accepted by the DPP, having regard to discretionary factors that may be taken into account,[328] and the view that Thompson acted 'humanely and compassionately, in a principled way and with the informed consent of the holder of the right to life'.[329] Consequently, in the absence of evidence contradicting that

[321] Ibid 123 [33].
[322] Ibid 123 [33].
[323] Ibid 123 [55].
[324] Ibid 123 [56].
[325] Bartels and Otlowski, above n 26, 545.
[326] Michael Pelly, 'Agony of man who killed the love of his life' Sydney Morning Herald (online) (21 February 2005 <http://www.smh.com.au/news/National/Agony-of-a-man-who-killed-the-love-of-his-life/2005/02/20/1108834664468.html>.
[327] Ibid.
[328] Nicholas Cowdery, *Prosecution Guidelines* (1 June 2007) Office of the Director of Public Prosecution <http://www.odpp.nsw.gov.au/docs/default-source/default-document-library/prosecution-guidelines.pdf?sfvrsn=2>.
[329] Nicholas Cowdery, 'Dying With Dignity' (2011) 86 *Living Ethics* 12.

Thompson acted from any motive other than love for his wife, Magistrate Alan Railton imposed an eighteen month wholly suspended sentence and ordered Thompson to pay $63 in costs.[330]

In similar vein to the above, John Godfrey pleaded guilty to aiding his 88 year old elderly mother who suffered from various debilitating medical conditions to commit suicide, in contravention of s 163 of the *Criminal Code Act 1924* (Tas).[331] Godfrey's mother was of sound mind and a long-time euthanasia advocate. On two prior occasions, she attempted to take her own life but without success being so frail.[332] Justice Underwood felt it was 'not the function of this Court to engage in debate about the appropriateness of the crime of aiding suicide'. However, he nevertheless felt the need to express his opinion that current law discriminates against persons suffering from physical disability. That is, whilst it is not an offence to end one's own life, providing assistance to an individual who is physically incapacitated to do so themselves, is inequitably an offence.[333]

In sentencing the accused, Underwood J cited with approval *obiter* of Coldrey J in *R v Hood*[334] as outlined above. In accepting Godfrey's crime was motivated solely out of 'compassion and love for his mother', and was an 'act of last resort', he classified Godfrey's conduct in the latter spectrum of *R v Hood's*[335] distinction.[336] However, analogous with *R v Hood*,[337] Underwood J opined that dismissing Godfrey's conduct 'without any curial sanction at all would diminish the sanctity of life, trivialise the significance to John Godfrey of his wrongful act and, in an undefined way, give the appearance of diminishing the importance of the life of Mrs Godfrey'. Consequently, although Underwood J felt it appropriate to convict Godfrey for his conduct, he wholly suspended the sentence imposed of twelve month's imprisonment.[338]

In conjunction with the above but more recently, Dorothy Hookey, a long-time euthanasia supporter, took her own life to end her intolerable suffering from arthritis in November of last year.[339] Fearing knowledge of her intention would implicate those she loved, she died alone, on her own terms, but without the chance to

[330] Bartels and Otlowski, above n 26, 545.
[331] *R v Godfrey* (Unreported, Supreme Court of Tasmania, Underwood J, 26 May 2004).
[332] Rachael Patterson and Katrina George, 'Euthanasia and Assisted Suicide: A Liberal Approval Versus the Traditional Moral View' (2005) 12 *Journal of Law and Medicine* 494.
[333] *R v Godfrey* (Unreported, Supreme Court of Tasmania, Underwood J, 26 May 2004).
[334] *R v Hood* [2002] VSC 123.
[335] Ibid 123 [33].
[336] Patterson and George, above n 332, 495.
[337] *R v Hood* [2002] VSC 123.
[338] *R v Godfrey* (Unreported, Supreme Court of Tasmania, Underwood J, 26 May 2004).
[339] Julia Medew, 'Exit International Member's Death Prompts Victoria Police to Suspect Assisted Suicide' *The Age* (online) 24 March 2015 <http://www.theage.com.au/national/health/exit-international-members-death-prompts-victoria-police-to-suspect-assisted-suicide-20150323-1m5u5s.html>.

say goodbye.[340] From Mr Hookey's account of events, Hookey said goodnight to him and their two adult children, before ingesting the fatal drug. Mr Hookey awoke at approximately 3:00am to find his wife deceased. Fearing a heart attack, cardiac pulmonary resuscitation was performed until paramedics arrived, but without success.[341]

Despite Hookey's careful planning, Mr Hookey and his children are being extensively investigated since, as stated above, inciting, aiding or abetting suicide is criminalised in Victoria.[342] Investigations to date are ongoing. The police are yet to decide whether charges will be pursued. However, if the cases above serve as any indication of how such a sensitive matter will be dealt with legally, it is unlikely Mr Hookey and/or his children will be prosecuted in the absence of tangible evidence, and given the circumstances of Hookey's death.[343] Then again, if the case is indeed pursued, it is unlikely Mr Hookey and/or his children will be imprisoned upon conviction, given precedent to date.[344]

Notwithstanding the above, in the absence of akin cases in Northern Territory, it is difficult to predict with certainty that its judiciary will treat comparative cases analogous to the above. In analysing pertinent provisions of the *NT Code*, it is evident that a person 'cannot authorise or permit another to kill him'.[345] However, analogous to other jurisdictions, persons are only criminally liable if they either assist or encourage another person to kill or attempt to kill himself/herself,[346] and intended to do so by his/her conduct.[347] Consequently, guilt appears likely to be found in Northern Territory if intention is established.[348] Therefore, if an individual *intended* to either supply the instrument or drug used, advised on methods adopted and/or actually killed the other person by administering the medication, he/she will arguably be guilty for contravening the *NT Code*.[349]

[340] Julia Medew, 'Euthanasia Supporters, Grieving Families Questioned by Victorian Police' *Sydney Morning Herald* (online) 24 March 2015 <http://www.smh.com.au/national/health/euthanasia-supporters-grieving-families-questioned-by-victorian-police-20150324-1m6j6a.html>.
[341] Julia Medew, 'Exit International Member's Death Prompts Victoria Police to Suspect Assisted Suicide', above n 339.
[342] *Crimes Act 1958* (Vic) s 6B(2).
[343] Julia Medew, 'Euthanasia Supporters, Grieving Families Questioned by Victorian Police', above n 340.
[344] Ibid.
[345] *Criminal Code Act 1983* (NT) s 26(3).
[346] Ibid s 162(1).
[347] Ibid s 162(2)-(3).
[348] Ibid.
[349] Ibid s162

C *What do cases demonstrate*

Suffice to say, in every Australian jurisdiction inciting, aiding or abetting suicide is criminalised. The law does not discriminate between those who assist patients or loved ones expressing a wish to die, and those situations where suicide is coerced or compelled.[350] This deduction is obviously common-sense, given difficulties associated with discerning whether or not influence or pressure has been exerted to cause individuals to decide to die.[351]

That said, it would appear that despite minute disparity in laws between jurisdictions, the above cases demonstrate that Australian courts appear unified in opining that lenient penalties are justified, where family members are responsible for assisting loved ones to die where the motivation is considered genuine.[352] This outlook adopted by legal officers and/or the judiciary reveals that a gap has developed between how the law says it will respond to cases of aiding and abetting, and how it actually responds.[353] This fact, coupled with the absence of definitive law, demonstrates that current law surrounding euthanasia and assisted suicide are incredibly unpredictable.[354] There is therefore considerable risk of unequal application, which may bring law into disrepute.

In the wake of Hookey's case, parliamentary debate regarding voluntary euthanasia has again been reignited. The above cases, and results from opinion polls conducted intermittently over the past four decades, undoubtedly substantiate that a majority of Australians are overwhelmingly in favour of giving people the right to end their life[355] when they have decided to do so, if strict guidelines are established.[356]

Without a doubt, laws criminalising euthanasia continue to fail as a deterrent. 'Backyard' euthanasia will endure as long as there is demand and as long as the only alternative is to watch loved ones suffer excruciatingly. Given Australia's ageing population, demand for euthanasia or physician-assisted suicide will only increase in demand.[357] Accordingly, permitting it to continue in an unregulated environment is undesirable given the potential for misuse and abuse. Consequently, given what is currently transpiring, it is arguable that a natural progression is for the Australian Parliament to introduce consistent laws into

[350] Steele and Worswick, above n 15, 419.
[351] Ibid 418.
[352] Hiley, above n 132, 7.
[353] Ibid 87.
[354] Steele and Worswick, above n 15, 419.
[355] Healey, above n 3.
[356] Julia Medew, 'Euthanasia Supporters, Grieving Families Questioned by Victorian Police', above n 340.
[357] Prichard, above n 94, 621.

every jurisdiction, which either legalises euthanasia, or proscribes and punishes the practice of euthanasia in its innumerable forms.

VIII AUTONOMY IN DIRECTIVES

Despite blanket prohibitions on euthanasia, certain Australian jurisdictions have enacted laws that legally permit end-of-life decisions to be made through Advance Medical Directive and/or Power of Attorneys. Then again, whilst these instruments exist to declare an individual's desires in the event they should lose decision-making capacity,[358] it does not allow a person to request for active assistance to die.[359] Only recently did Northern Territory legislate to allow Territorians to create 'living wills', following the passing of the *Advance Personal Planning Act 2014* (NT) ('*APP*').[360] It is understood, the purpose and intent of the *APP* is to empower and provide autonomy and comfort to people when it comes to decisions about their future health, financial and lifestyle preferences.[361]

When an Advance Personal Plan is created,[362] decisions made by the maker are legally binding. Through that plan, a person may refuse, for example, blood transfusions, chemotherapy, radiation or antibiotics, which has effect as if that person made the decision at the time the proposed action is needed.[363]

In the absence of cases challenging the validity of 'living wills' in the Northern Territory, given the *APP's* infancy, McDougall J's decision in *Hunter and New England Area Health Service v A*[364] is arguably highly persuasive. In deciding the matter, McDougall J cited and adopted on point authorities from King CJ and Cardozo and Staughton JJ. In short, his Honour accepted that of 'paramount consideration'[365] is 'every human being of adult years and sound mind … right to determine what shall be done with his own body'.[366] This right therefore entitles a person 'to decide for herself whether she will or will not receive medical or surgical treatment, even in circumstances where she is likely or certain to die in the absence of treatment'.[367] Accordingly, in-line with the cited authorities, McDougall J respected Mr A's directive and

[358] Northern Territory Government, *Advance Personal Planning* (24 November 2014) <http://www.nt.gov.au/justice/pubtrust/app/index.shtml>.
[359] Loane Skene, 'When Can Doctors Treat Patients Who Cannot or Will Not Consent?' (1997) 23(1) Monash University Law Review 77, 79.
[360] Halfpennys Lawyers, *Advanced Personal Planning* <http://www.halfpennys.com.au/advanced-personal-plan/>.
[361] Northern Territory Government, *Advance Personal Planning*, above n 358.
[362] *Advance Personal Planning Act 2014* (NT) pt 2.
[363] Northern Territory, *Parliamentary Debates*, Legislative Assembly, 24 August 2013, 41-7 (John Elferick, Attorney-General and Justice).
[364] *New England Area Health Service v A* (2009) 74 NSWLR 88 (McDougall J).
[365] *F v R* (1983) 33 SASR 189, 193 (King CJ).
[366] *Schloendorff v Society of New York Hospital* 211 NY 125, 129.
[367] *Re T (Adult: Refusal of Medical Treatment)* [1993] Fam 95, 120-121 (Straughton J).

held, 'whenever there is a conflict between a capable adult's exercise of the right of self-determination and the State's interest in preserving life, the right of the individual must prevail'.[368]

Notwithstanding the above, whilst a right exists through directives to prevent extraordinary measures from being taken to save his/her life, this privilege is dissimilar to the entitlement to be euthanised. Under the latter, terminally ill individuals, who are mentally sound, may choose to end their life whenever they see fit. The closest an advanced directive comes to allowing a person to end their life, is if an individual is involved in a fateful incident and/or is in the process of dying, and the directive instructs medicos to refrain from taking extraordinary measures to save his/her life.[369]

That being said, there are strong grounds to argue that law has created an artificial distinction between killing and letting a person die given that causation, intention and foresight are almost always difficult to differentiate.[370] It is indeed irrefutable that when medicos obey advanced directives, or refrain from administering treatment and/or initiating or continuing life-prolonging measures for the patient's sake, that medico does so knowing that it may benefit the patient by bringing about his/her death.[371] Viewed from this perspective, there exists no underlying difference between euthanasia and advanced directives laws,[372] despite opponents believing the latter is not euthanasia.[373]

Again, the above evinces a weakness in the killing and let die distinction. Proponents therefore have added ammunition to contend that Parliament has an obligation to remedy current incoherent laws to acknowledge the right to be euthanised, given that euthanasia and allowing patients to refuse/stop treatment is one and the same, distinguished only by the latter choice being more protracted and inhumane.[374]

IX CONCLUSION

The euthanasia debate has been vigorously re-activated in Australia as a result of the Commonwealth introducing the Dignity Bill.[375] As can be seen from the above, there is a wealth of literature on euthanasia, a subject upon which many people hold strong views. Accordingly, following several decades of debates

[368] *New England Area Health Service v A* (2009) 74 NSWLR 88 [17] (McDougall J).
[369] *Natural Death Act 1988* (NT).
[370] Michael Douglas, above n 58, 634.
[371] Ibid 637.
[372] James Rachels, 'Active and Passive Euthanasia' (1975) 292 *New England Journal of Medicine* 78.
[373] Michael Douglas, above n 58, 628.
[374] Ibid 638.
[375] Bartels and Otlowski, above n 26, 550.

on such a complex issue,[376] universal resolution of the matter still remains futile. But one point proponents and opponents see eye-to-eye, is that the process of dying should always be dignified.[377]

As has been demonstrated above, the distinction between euthanasia and the Doctrine and euthanasia and letting a patient die is, in all sincerity, artificial and hypocritical.[378] Additionally, it is naïve to believe that euthanasia is not currently being practiced throughout Australia in its innumerable forms.[379] Existing coronial data proves that a percentage of annual deaths is, and will likely remain attributable to,[380] covert euthanasia involving medicos,[381] whether through assisted suicide or under the Doctrine, or 'atypical' cases[382] of 'mercy killings' carried out by loved ones.[383]

Time and time again, national opinion polls have consistently shown[384] legalisation of euthanasia is supported by 85 per cent[385] of the population,[386] and growing as public demand for euthanasia increases due to Australia's ageing population.[387] As stated by Professor George Williams, '[j]udges have taken law reform in this area as far as they can. For many people the best the current law can offer them is the right to starve to death. The buck now stops with our politicians'.[388]

Consequently, irrespective of one's personal belief and/or position on euthanasia, it is clear the issue of euthanasia law reform will not fade into oblivion, but instead will continue to be promoted and fought for by advocates who believe in its necessity.[389] Therefore, given the overwhelming support for legalisation, proponents are right to proclaim it is time that 'out of touch' politicians listen to their electorates[390] and exhaustively consider the issue of euthanasia so as to provide clarity around this dark trade.

[376] Saltau and Ambrose, above n 280.
[377] Hiley, above n 132, 234.
[378] McGee, above n 186, 49.
[379] Bartels and Otlowski, above n 26, 550.
[380] Magnusson, '"Underground Euthanasia" and the Harm Minimization Debate', above n 88, 486.
[381] Hicks, above n 269, 141.
[382] See, eg *R v Hood* [2002] VSC 123.
[383] Bartels and Otlowski, above n 26, 555.
[384] Greens, above n 68.
[385] Australian Associated Press, '85 per cent Support Voluntary Euthanasia – Poll' *The Australian* (online), 26 October 2009 < http://www.theaustralian.com.au/news/latest-news/per-cent-support-voluntary-euthanasia-poll/story-fn3dxiwe-1225791455181>.
[386] Medianet, Voluntary Euthanasia – NSW Parliamentary Forum Today (25 February 2015) <http://medianet.com.au/releases/release-details?id=822424>.
[387] Prichard, above n 94, 621.
[388] Medianet, above n 386.
[389] Steele and Worswick, above n 15, 415.
[390] Greens, above n 68.

Parliament's duty is to now decide whether it reforms current laws so as to criminalise voluntary euthanasia, the Doctrine[391] and the right to refuse medical treatment in its entirety, or allow all three to operate in carefully controlled circumstances. Indisputably, the latter choice of legalising and regulating euthanasia is, in the long run, more favourable, given the real potential for abuse if laws remain in their current[392] ambiguous state. As an aside, introducing euthanasia laws must be viewed as dissimilar to introducing into society, novel laws in a novel area. Euthanasia is not an abhorrent concept. It is being practiced, as stated above, throughout Australia without guidelines and without scrutiny. The benefits of legitimising euthanasia therefore far outweighs its detriments. That is, legitimising covert[393] practices of euthanasia in its many forms will properly protect those who engage in the conduct upon request,[394] and also provide peers with the opportunity to scrutinise and monitor[395] its practice so as to safeguard[396] patients and/or medicos from potential abuse.[397]

Voluntary euthanasia is an act that impacts directly on an individual who considers that option right for them. Putting aside religious and moral beliefs, the most humane thing society can do for people suffering from constant excruciating pain, is to allow that person to choose his/her path. Only an individual knows what is right for them. As the law currently stands, individuals may only choose inhumane and sometimes torturous deaths. Undeniably, denying voluntary euthanasia is cruel and callous. Seventy-five per cent of Australians think 'we give our dogs a kinder death'.[398] When the quality of life is more important than the quantity of life, voluntary euthanasia is a good option[399] and hopefully a future reality of Australian law, should the Commonwealth succeed in enacting the Dignity Bill.

[391] Senate Legal and Constitutional Affairs Legislation Committee, *Medical Services (Dying with Dignity) Exposure Draft Bill*, above n 84, 5.
[392] Hiley, above n 132, 229.
[393] Magnusson, '"Underground Euthanasia" and the Harm Minimization Debate', above n 88, 489.
[394] Bartels and Otlowski, above n 26, 550.
[395] Margaret Otlowski, 'Active Voluntary Euthanasia: Options for Reform' (1994) 2(2) *Medical Law Review* 161, 202.
[396] Conversation, above n 62.
[397] Bartels and Otlowski, above n 26, 550.
[398] Hicks, above n 269, 141.
[399] Swanton, above n 273.

BIBLIOGRAPHY

A *Articles/Books/Reports*

Bagaric, Mirko, 'Euthanasia: Patient Autonomy Versus the Public Good' (1999) 18(1) *University of Tasmania Law Review* 146

Bartels, Lorana and Margaret Otlowski, 'A Right to Die? Euthanasia and the Law in Australia' (2010) 17(4) *Journal of Law and Medicine* 532

Baume, Peter and Emma O'Malley, 'Euthanasia: Attitudes and Practices of Medical Practitioners' (1994) 161 *The Medical Journal of Australia* 137

Cartwright, Colleen, 'The Rights of the Terminally Ill Act Revisited' (2008) 17(1) *Australian Health Bulletin* 2

Cowdery, Nicholas, 'Dying With Dignity' (2011) 86 *Living Ethics* 12

Douglas, Charles, 'The Intention to Hasten Death: A Survey of Attitudes and Practices of Surgeons in Australia' (2001) 175(10) *Medical Journal of Australia* 511

Douglas, Charles, Ian Kerridge and Rachel Ankeny, 'Managing Intention: The End-of-life Administration of Analgesics and Sedatives, and the Possibility of Slow Euthanasia' (2008) 27(7) *Bioethics* 388

Douglas, Michael, 'An Absurd Inconsistency in Law: Nicklinson's Case and Deciding to Die' (2014) 21 *Journal of Law and Medicine* 627

Dunnett, Andrew, *Euthanasia: The Heart of the Matter* (Hodder and Stoughton, 1st ed, 1999)

Fraser, Sharon and James Walters, 'Death – whose decision? Euthanasia and the Terminally Ill' (2000) 26 *Journal of Medical Ethics* 121

Healey, Justin (ed), *Issues in Society: Voluntary Euthanasia Debate* (Spinney Press, 2013) vol 359

Hicks, Neville, 'The Quality of Death: Euthanasia in Australia' (1998) 24(2) *Journal of Medical Ethics* 141

Hiley, Victoria, *In Pursuit of a Good Death: Responding to Changing Sensibilities in the Context of the Right to Die Debate* (PhD Thesis, The University of Sydney, 2008) 229

Huxtable, Richard, 'Get out of Jail Free? The Doctrine of Double-effect in English Law' (2004) 18 *Palliative Medicine* 62

Kure, Josef (ed), *Euthanasia – The "good death" Controversy in Humans and Animals* (InTech, 2011).

Lewis, Penney, 'The Empirical Slippery Slope: From Voluntary to Non-Voluntary Euthanasia' (2007) *Journal of Law, Medicine & Ethics* 197

MacLeod, Rod, Donna Wilson and Phillipa Malpas, 'Assisted or Hastened Death: The Healthcare Practitioner's Dilemma' (2012) 4(6) *Global Journal of Health Science* 87

Magnusson, Roger, *Angels of Death: Exploring Euthanasia Underground* (Melbourne University Press, 2002)

Magnusson, Roger, '"Underground Euthanasia" and the Harm Minimization Debate' (2004) 32(3) *Journal of Law, Medicine and Ethics* 486

Math, Suresh and Santosh Chatuvedi, 'Euthanasia: the Right to life vs Right to Die' (2012) 136(6) *Indian Journal of Medical Research* 899 <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3612319/>

Matker, Prema, *Analysing Restrictive and Liberal Approaches Towards Assisted Suicide and Euthanasia* (MPhil Thesis, University of London, 2010)

McGee, Andrew, 'Double-effect in the Criminal Code 1899 (QLD): A Critical Appraisal' (2004) 4(1) *Queensland University of Technology Law and Justice Journal* 46

Otlowski, Margaret, 'Active Voluntary Euthanasia: Options for Reform' (1994) 2(2) *Medical Law Review* 161

Patterson, Rachael, and Katrina George, 'Euthanasia and Assisted Suicide: A Liberal Approval Versus the Traditional Moral View' (2005) 12 *Journal of Law and Medicine* 494

Prichard, Jeremy, 'Euthanasia: A Reply to Bartels and Otlowski' (2012) 19 *Journal of Law and Medicine* 610

Rachels, James, 'Active and Passive Euthanasia' (1975) 292 *New England Journal of Medicine* 78

Rothschild, Alan, 'Just When you Thought the Euthanasia Debate had Died' (2008) 5(69) *Bioethical Inquiry* 71

Sayers, Mark, ‘Euthanasia: Moral Murder’ (1995) 4(1) *Griffith Law Review* 6

Shaw, Andrew, ‘Two Challenges to the Double-effect Doctrine: Euthanasia and Abortion’ (2002) 28 *Journal of Medical Ethics* 102

Skene, Loane, *Law and Medical Practice: Rights, Duties, Claims and Defences* (LexisNexis Butterworths, 3rd ed, 2008)

Skene, Loane, 'When Can Doctors Treat Patients Who Cannot or Will Not Consent?' (1997) 23(1) Monash University Law Review 77

Smith, Alexander, ‘Euthanasia: The Strengths of the Middle Ground’ (1999) 7 *Medical Law Review* 194

Somerville, Margaret, ‘Euthanasia by Confusion’ (1997) 20(3) *University of New South Wales Law Journal* 550

Spinney, Laura, ‘Last Rights: If Someone Wants Help to End their Life’ (2005) 186(2496) *New Scientist* 46

Steele, Sarah and David Worswick, ‘Destination Death: A Review of Australian Legal Regulation Around International Travel to end Life’ (2013) 21 *Journal of Law and Medicine* 415

Stephens, Ronald, ‘The Moral Meaning of Morphine Drips: A Modern Shibboleth Denied’ *The Midwest Quarterly* 346

Thomson, Colin, ‘Death, a Necessary End, Will Come when It will Come’ (2011) 41 *Internal Medicine Journal* 439

Werren, Julia, Necef Yuksel and Saxon Smith, ‘Avoiding a Fate Worse than Death: An Argument for Legalising Voluntary Physician-Based Euthanasia’ (2012) 20 *Journal of Law and Medicine* 184

White, Benjamin, Lindy Willmott and Michael Ashby, ‘Palliative Care: Double-effect and the Law in Australia’ (2011) 41(6) *Internal Medicine Journal* 485

Williams, George and Matthew Darke, 'Euthanasia Laws and the Australian Constitution' (1997) 20(3) *University of New South Wales Law Journal* 647

Willmott, Lindy, Ben White and Jocelyn Downie, ‘Withholding and Withdrawal of ‘futile’ lie-sustaining treatment: Unilateral Medical Decision-Making in Australia and New Zealand (20130 20 *Journal of Law and Medicine* 907

Willmott, Lindy, and Greg Shoebridge, 'Medical Professionals – Proposed Protection: Doctrine of Double-effect' (2003) 23 *The Queensland Lawyer* 96

Young, Robert, *Medically Assisted Death* (Cambridge University Press, 2007)

B *Cases*

Auckland Area Health Board v Attorney-General [1993] 1 NZLR 235

Brightwater Care Ground (Inc) v Rossiter (2009) 40 WAR 84

Capital Duplicators Pty Ltd v Australian Capital Territory (No. 1) (1992) 177 CLR 248

F v R (1983) 33 SASR 189

Hunter and New England Area Health Service v A (2009) 74 NSWLR 88

New England Area Health Service v A (2009) 74 NSWLR 88

R v Adams [1956] Crim LR 365

R v (Bodkin) Adams [1957] Crim LR 365

R *v Dutton* [2005] NSWCCA 248

R v Godfrey (Unreported, Supreme Court of Tasmania, Underwood J, 26 May 2004)

R v Hood (2002) VSC 123

Re T (Adult: Refusal of Medical Treatment) [1993] Fam 95

Rodriguez v British Columbia (Attorney-General) [1993] 3 SCR 519

Rogers v Whitaker (1992) 175 CLR 479

Royall v The Queen (1991) 172 CLR 378

Schloendorff v Society of New York Hospital 211 NY 125

Spratt v Hermes (1965) 114 CLR 226

Vacco v Quill 521 US 703 (1997)

Wake v Northern Territory of Australia (1996) 109 NTR 1

Washington v Glucksberg 521 US 702 (1997)

C *Legislation*

Advance Personal Planning Act 2014 (NT)

Consent to Medial Treatment and Palliative Care Act 1995 (SA)

Crimes Act 1958 (Vic)

Criminal Code Act 1983 (NT)

Criminal Code Act 1988 (Qld)

Criminal Code Act Compilation Act 1913 (WA)

Dying with Dignity Bill 2009 (Tas)

Euthanasia Laws Bill 1996 (Cth)

Medical Services (Dying with Dignity) Exposure Draft Bill 2014

Medical Treatment (Health Directions) Act 2006 (ACT)

Medical Treatment (Physician Assisted Dying) Bill 2008 (Vic)

Natural Death Act 1988 (NT)

Northern Territory (Self Government) Act 1978 (Cth)

Powers of Attorney Act 1998 (QLD)

Rights of the Terminally Ill Act 1995 (NT)

Rights of the Terminally Ill Bill 2013 (NSW)

Rights of the Terminally Ill Regulation 1996 (NT)

D *Other*

Aird, Claire, ‘NSW election 2015: Almost three quarters of voters support euthanasia, Vote Compass finds’ *News* (online) 15 March 2015 < http://www.abc.net.au/news/2015-03-15/nsw-voters-support-euthanasia-vote-compass-finds/6313864>

Australian Associated Press, '85 per cent Support Voluntary Euthanasia – Poll' *The Australian* (online), 26 October 2009 < http://www.theaustralian.com.au/news/latest-news/per-cent-support-voluntary-euthanasia-poll/story-fn3dxiwe-1225791455181>.

BBC News, 'The Doctrine of Double Effect' (2014) <http://www.bbc.co.uk/ethics/euthanasia/overview/doubleeffect.shtml>

Belardi, Linda, *Tasmanian Euthanasia Bill Defeated in Parliament* (22 October 2013) Australian Ageing Agenda < http://www.australianageingagenda.com.au/2013/10/22/tasmanian-euthanasia-bill-defeated-in-parliament/>

Biegler, Paul, *Memo to Philip Nitschke: Let's Keep Euthanasia for the Dying* (8 July 2014) The Conversation <http://theconversation.com/memo-to-philip-nitschke-lets-keep-euthanasia-for-the-dying-28846>

Circa, Natasha, 'Euthanasia – the Australian Law in an International Context' (Research Paper No 4, Parliamentary Library, Parliament of Australia, 1996-97)

Commonwealth, *Parliamentary Debates*, House of Representatives, 28 October 1996, 5904 (Kevin Andrews)

Conversation, *Another Voluntary Euthanasia Bill Bites the Dust* (19 November 2013) <http://theconversation.com/another-voluntary-euthanasia-bill-bites-the-dust-19442>

Cowdery, Nick, *Prosecution Guidelines* (1 June 2007) Office of the Director of Public Prosecution <http://www.odpp.nsw.gov.au/docs/default-source/default-document-library/prosecution-guidelines.pdf?sfvrsn=2>

Darby, Andrew, 'Euthanasia Bill Put Forward in Tasmania' *Sydney Morning Herald* (online) 26 September 2013 < http://www.smh.com.au/national/euthanasia-bill-put-forward-in-tasmania-20130926-2uhb9.html>

Davies, Julie-Anne, 'Right to Die: Choosing an End to Life' *Sydney Morning Herald* (online) 10 November 2014 <http://www.smh.com.au/national/right-to-die-choosing-an-end-to-life-20141110-11jlu1.html>

Department of Parliamentary Services (Cth), Bills Digest, No 45 of 1996-97, 17 October 1996 <http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/bd/BD9697/97bd045>

Di Natale, Richard, *Dying with Dignity* (2014) Australian Greens <http://richard-di-natale.greensmps.org.au/campaigns/dying-dignity>

Dying with Dignity New South Wales, *Submission to the Senate Inquiry: Exposure Draft of the Medical Services (Dying with Dignity) Bill 2014* (21 August 2014) <http://dwdnsw.org.au/sub140821/>

Dying with Dignity New South Wales, *The Principle of 'Double-effect'* <http://dwdnsw.org.au/the-principle-of-double-effect/

Gerathy, Sarah, 'Upper house votes down Voluntary Euthanasia Bill' ABC News (online) 23 May 2013 < http://www.abc.net.au/news/2013-05-23/upper-house-votes-down-voluntary-euthanasia-bill/4709020>.

Greens, *Committee Calls for Conscience Vote on Dying with Dignity* (10 November 2014) < http://greens.org.au/node/6469>

Greens, *Greens Back Voluntary Euthanasia Campaign* (14 March 1999) < http://greensmps.org.au/portfolios/health?page=88>

Gribbin, Caitlyn, 'Euthanasia Advocate Philip Nitschke Criticised Over Support for 45 Year Old who Committed Suicide' *ABC News* (online) 5 July 2014 <http://www.abc.net.au/news/2014-07-03/nitschke-criticised-over-45yo-mans-suicide/5570162>

Hadfield, Shelley, 'Euthanasia Campaigner Philip Nitschke in Court bid to Overturn Medical Licence Suspension' *Herald Sun* (online) 31 March 2015 <http://www.heraldsun.com.au/news/law-order/euthanasia-campaigner-philip-nitschke-in-court-bid-to-overturn-medical-licence-suspension/story-fni0fee2-1227285364599>.

Hagan, Kate, 'Tony Abbott Commits to free Vote on Euthanasia' Sydney Morning Herald (online) 20 December 2014 <http://www.smh.com.au/national/tony-abbott-commits-to-free-vote-on-euthanasia-20141219-12ayc7.html>

Halfpennys Lawyers, *Advanced Personal Planning* <http://www.halfpennys.com.au/advanced-personal-plan/>

Hermant, Norman, 'Euthanasia Debate: Doctor Confirms he Helped Patient Die, Wants to be Charged' *ABC News* (online) 8 May 2014 <http://www.abc.net.au/news/2014-05-07/doctor-confirms-he-helped-patient-die/5437686>

Jarred, Wayne, 'The Care of Terminally-ill Patients Bill 2002 (Qld): Clarifying the Right of Medical Practitioners to Administer Treatment' (Research Paper No 29, Parliamentary Library, Senate, 2002)

Legal and Constitutional Affairs Legislation Committee, Parliament of Australia, *Medical Services (Dying with Dignity) Exposure Draft Bill 2014* (2014)

Life Resources Charitable Trust, *The 'Principle of Double-effect'* (2011) <http://www.life.org.nz/euthanasia/euthanasiaethicalkeyissues/double-effect/>

Lindsay, Ronald, Rebecca Dick and Tom Beauchamp, 'Hastened Death and the Regulation of the Practice of Medicine' (2006) 22(1) *Washington University Journal of Law and Policy* 22 <http://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1340&context=law_journal_law_policy>

Marker, Rita, 'End-of-Life Decisions and Double Effect – How Can This be Wrong When It Feels so Right' (2011) *The National Catholic Bioethics Quarterly* 101 <http://www.patientsrightscouncil.org/site/wp-content/uploads/2012/03/NCBQ_11_1_8_MarkerArticle_99-119.pdf>

Medew, Julie, 'Doctor Admits Giving Dying Man the Drugs to End his Life' *The Age* (online) 28 April 2014 <http://www.theage.com.au/victoria/doctor-admits-giving-dying-man-the-drugs-to-end-his-life-20140427-zr07i.html>

Medew, Julie, 'Euthanasia: A Question of Trust', *Sydney Morning Herald* (online), 12 November 2014 <http://www.smh.com.au/action/printArticle?id=63123512>

Medew, Julia, 'Euthanasia Activist Philip Nitschke Loses Legal Battle to Practice Medicine' *Sydney Morning Herald* (online) 7 January 2015 <http://www.smh.com.au/national/health/euthanasia-activist-philip-nitschke-loses-legal-battle-to-practice-medicine-20150107-12jm6r.html>

Medew, Julie, 'Euthanasia Advocate Rodney Syme Interviewed by Police over Death Drug Confession' *The Age* (online) 22 October 2014 <http://www.theage.com.au/victoria/euthanasia-advocate-rodney-syme-interviewed-by-police-over-death-drug-confession-20141022-119t9b.html#ixzz3Gvddm16I>

Medew, Julia, 'Euthanasia Supporters, Grieving Families Questioned by Victorian Police' *Sydney Morning Herald* (online) 24 March 2015 <http://www.smh.com.au/national/health/euthanasia-supporters-grieving-families-questioned-by-victorian-police-20150324-1m6j6a.html>

Medew, Julia, 'Exit International Member's Death Prompts Victoria Police to Suspect Assisted Suicide' The Age (online) 24 March 2015 <http://www.theage.com.au/national/health/exit-international-members-death-prompts-victoria-police-to-suspect-assisted-suicide-20150323-1m5u5s.html>

Medianet, Voluntary Euthanasia – NSW Parliamentary Forum Today (25 February 2015) < http://medianet.com.au/releases/release-details?id=822424>

News, 'Tasmania's euthanasia Bill fails narrowly' *News* (online), 17 October 2013 <http://www.news.com.au/national/breaking-news/tasmanias-euthanasia-bill-fails-narrowly/story-e6frfku9-1226741999723>

Northern Territory, *Parliamentary Debates*, Legislative Assembly, 22 February 1995, 67 (Marshall Perron) <http://www.nt.gov.au/lant/parliamentary-business/committees/rotti/serial67speech.pdf>

Northern Territory, *Parliamentary Debates*, Legislative Assembly, 24 August 2013, 41-7 (John Elferick, Attorney-General and Justice)

Northern Territory Government, *Advance Personal Planning* (24 November 2014) <http://www.nt.gov.au/justice/pubtrust/app/index.shtml>

Organisation of Rabbis of Australasia, Submission No 34to Legal and Constitutional Affairs Legislation Committee, *Medical Services (Dying with Dignity) Exposure Draft Bill 2014*, 21 August 2014, 2 <http://www.aph.gov.au/DocumentStore.ashx?id=e539664c-5e2d-4344-94ad-9bdd9c1b9a8c&subId=299751>

Pelly, Michael, 'Agony of a man who killed the love of his life', *Sydney Morning Herald* (online) 21 February 2005 <http://www.smh.com.au/news/National/Agony-of-a-man-who-killed-the-love-of-his-life/2005/02/20/1108834664468.html>

ProCon, *Top 10 Pros and Cons: Should Euthanasia or Physician-Assisted Suicide be Legal?* (13 December 2013) <http://euthanasia.procon.org/view.resource.php?resourceID=000126>

Saltau, Chloe and Theresa Ambrose, *A Story of Terminal Sedation* (7 March 2001) The World Federation of Right to Die Societies <http://www.worldrtd.net/story-terminal-sedation>

Saunders, Peter, *Ten Reasons why Euthanasia should not be legalized,* Right to Life Australia <http://www.righttolife.com.au/index.php/life-issues/euthanasia>

Schwarz, Judith, 'The Rule of Double-effect and Its Role in Facilitating Good End-of-Life Palliative Care' (2004) 6(2) *Journal of Hospice and Palliative Nursing* <http://www.medscape.com/viewarticle/474834_8>

Select Committee on Euthanasia, Parliament of Northern Territory, *The Right of the Individual or the Common Good?* (1995) <http://www.nt.gov.au/lant/parliamentary-business/committees/rotti/rottireport/vol1.pdf>.

Senate Legal and Constitutional Legislation Committee, Parliament of Australia, *Euthanasia Laws Bill 1996* (March 1997) 2 <http://www.nt.gov.au/lant/parliamentary-business/committees/rotti/euthanasia97.pdf>

Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, *Rights of the Terminally Ill (Euthanasia Laws Repeal) Bill 2008* (2008)

Shakespeare, William, 'The Life and Death of Julius Caesar', Act 2, Scene 2

Smiley, Stephen, 'Voluntary Euthanasia Law Defeated by Two Votes' *ABC News* (online), 26 November 2013 < http://www.abc.net.au/news/2013-10-17/voluntary-euthanasia-law-defeated-by-one-vote/5029876>

Somerville, Margaret, *Euthanasia Would Hurt Doctors* (2009) Catholic Education Resource Center < http://www.catholiceducation.org/en/controversy/euthanasia-and-assisted-suicide/euthanasia-would-hurt-doctors.html>

Stanford Encyclopedia of Philosophy, *Doctrine of Double Effect* (23 September 2014) <http://plato.stanford.edu/entries/double-effect/>.

Swanton, David, *Arguments for Euthanasia* (2015) Ethical Rights <http://www.ethicalrights.com/submissions/euthanasia/92-arguments-in-support-of-euthanasia.html>

Syme, Rodney, 'A Tale of Two Deaths' (2010) *South Australian Voluntary Euthanasia Society* <http://www.saves.asn.au/archives/resources/collection/col18.php>

Tyson, Peter, *The Hippocratic Oath Today* (27 March 2001) Public Broadcasting Service <http://www.pbs.org/wgbh/nova/body/hippocratic-oath-today.html>

Wahlquist, Calla, 'Nigel Brayley's Wife Defends Her Husband Against Accusations of Foul Play in Lina Brayley's Death' *Perth Now* (online) 19 May 2014 <http://www.perthnow.com.au/news/western-australia/nigel-brayleys-wife-defends-her-husband-against-accusations-of-foul-play-in-lina-brayleys-death/story-fnhocxo3-1226922419337>